
(1969) 09 CAL CK 0009
In the Calcutta High Court
Case No : Suit No. 3126 of 1968

Batokristo Nandy

APPELLANT

Vs

Ranadeb Chowdhuri

RESPONDENT

Date of Decision : 19-09-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 1 Rule 8(2), Order 16 Rule 9, 11, 80
Companies Act, 1956 — Section 186
East Bengal Club Rules — Rule 15, 17(11), 38
Evidence Act, 1872 — Section 114, 16
Judicature Act, 1873 — Section 16, 23, 24, 25, 34
Trade Union Act, 1871 — Section 4

Citation : (1970) 40 CompCas 491 : (1972) 2 ILR (Cal) 480

Hon'ble Judges : Deb, J

Bench : Single Bench

Advocate : A.C. Mitra, D.K. De and Ajoy Ghosh, for the Appellant; S.C. Sen and Bikash Sen for Defendant No. 1, Subimal C. Roy, B. Das and S.K. Roy Choudhury for Defendants Nos. 2 to 4 Somnath Chatterji and P. K. Das for Added Defendants, for the Respondent

Judgement

Deb, J.—East Bengal Club is a non-proprietary members' club. It is neither a registered society nor is it an incorporated body under any statute. It is a sporting club having many respectable persons as its members.

2. The Defendant No. 1 is an eminent member of the Bar with an extensive practice throughout this country and he is the President of the Club. The Defendant No. 2, Arun Roy, is also a member of the Bar- practicing in Criminal Courts and was one of the Vice-Presidents of the Club when the suit was filed. The Defendant No. 3, Arun Bhattacharya, is an employee of the Life Insurance Corporation and so was Paresh Nandy, the Defendant No. 4, who had retired in 1968 from service.

3. These Defendants are the members of the Election Board of the Club to

conduct the election of 1968 in which the members of the Executive Committee and few other officials of the Club were going to be elected and the elected members are to hold their posts for three years.

4. The added Defendant No. 5, Dr. Nripendra Nath Das, a well-known Surgeon of Calcutta, was one of the Vice-Presidents of the Club at the time the suit was filed. The Plaintiffs and the other added Defendants are the members of the Club and they are entitled to cast their votes in the above election.

5. Main objects of the Club are, inter alia, to promote moral, mental and cultural development amongst its members including sporting spirit in this country in general and among its members in particular, and it is most unfortunate that I will have to go into the question as to how far these noble objects were adhered to and implemented in relation to the election of 1968.

6. On December 6, 1968, an order was made under Order 1, Rule 8 of the CPC authorising the Plaintiffs to file this suit for selves and as representing all the members of the Club and also to sue the Defendant No. 1 personally as President and as a member of the Election Board and also as representing all the members of the Executive Committee of the Club. With the above authority, the suit was filed on the same day in which the Defendants Nos. 2 to 4 were impleaded for selves and as members of the Election Board.

7. Relief's claimed in the suit are for a declaration that the Plaintiffs have a right to a fair election of the Executive Committee of the Club, for a permanent injunction restraining the Defendants Nos. 1 to 4 as members of the Election Board from holding any election of the Executive Committee except under the supervision of this Court for a perpetual injunction restraining the Defendants Nos. 1 to 4 as members of the Election Board from dispatching any ballot papers except by registered post addressed and dispatched under the supervision of the Plaintiffs. Main prayer in the suit is that the election should be held under the supervision of this Court.

8. It is alleged in the plaint that J. C. Guha led a group of members of the Club in the election for the year 1964 which was held in April 1965 under the supervision of this Court and became the General Secretary of the Club. He had absolute control over the Executive Committee and in order to retain control over the recurring revenue of over Rs. 3,60,000 per year from about 6,000 members changed the rule of the Club from annual to triennial election. It is further alleged that the next election which was held by the end of 1965, Guha constituted the Election Board with his own men and the members of that Election Board pretended to despatch ballot papers under certificates of posting with the result many voters did not receive their ballot papers at all and Guha was again elected the General Secretary with an absolute majority in the Executive Committee. Allegation of reign of terror alleged to have been let loose by Guha averred in the plaint are wholly irrelevant for the purpose of deciding this suit and I do not propose to deal with them at all.

9. In the plaint it is further alleged that the present Election Board is under absolute control and domination of Guha and a large number of members including the Plaintiffs are apprehensive that no fair election will be held by the Defendants Nos. 1 to 4 who will hand over the ballot papers to Guha and his supporters and with some exceptions no ballot papers would be actually posted and most of the voters will not get their ballot papers although these ballot papers will find their places in the ballot boxes with markings in favour of Guha and his group who are by no means supported by the majority of the members of the Club. Particulars of domination by Guha over the Defendants Nos. 1 to 4 are given in the plaint but it is not necessary to refer them here.

10. It is further stated in the plaint that sending of ballot papers under registered post to the voters is* the only way to ensure a fair election which is the convention of the Club since 1960 excepting that in the election held in December 1965 the ballot papers were purported to have been posted under certificates. The Plaintiffs as well as a large number of members exceeding 200 in number had earnestly requested the Defendants Nos. 1 to 4 to despatch the ballot papers under registered post, but the said Defendants had wrongfully refused to comply with the said request and are wrongfully adopting the same pretended mode of despatch of ballot papers under certificates of posting. The Plaintiffs and the members whom they represent are directly interested in the assets and properties of the Club which are going to be vested in the Executive Committee under the rules of the Club and they are interested in the due administration of the Club by a duly elected Executive Committee. It is further stated that they are entitled to cast their votes in election and are entitled to insist upon a free and fair election of the Executive Committee of the Club. It is not necessary to refer to the other allegations made in the plaint except that in para. 25 it is stated that the Plaintiffs are not claiming any relief against the Executive Committee, and as their presence might be necessary for adjudication of disputes involved in this suit they were added and represented by the President.

11. It is not necessary to refer to the statements made in the written statement of the Defendant No. 1 excepting that in para. 12 he has stated that he was not a party to any of the alleged irregular acts mentioned in the plaint.

12. In their joint written statement filed by the Defendants Nos. 2 to 4 they have,, inter alia, taken the defence that the suit has been mala fide filed by the Plaintiffs which is not for the benefit of the Club but at the instance of one Nishit Chandra Ghosh, an ex-Treasurer of the Club, against whom a suit for account is pending in this Court being Suit No. 516 of 1966 and the Plaintiffs are the employees of Nishit Chandra Ghosh. They have not denied that the Plaintiffs are entitled to vote in the election nor have they denied that the Plaintiffs including 200 members requested them to send the ballot papers, and apart from these facts they have denied all other material allegations made in the plaint including the allegations that J. C. Guha was a leader of any group. They have further

alleged that the members of the present Election Board are faithfully, honestly, properly and efficiently discharging their duties in strict compliance with the rules of the Club and they have since bona fide and duly posted all the ballot papers to all the members entitled to vote in strict compliance with the rules. They have questioned the jurisdiction of this Court to try this suit and have also taken a number of technical defences to non-suit the Plaintiffs.

13. The Defendants Nos. 5 to 8 were added by the Appeal Court and in their joint written statement they have, inter alia, denied the posting of the said ballot papers under certificates of posting and they have challenged the validity and legality of such postings. They have alleged that purported posting of ballot papers was done by the defendants Nos. 1 to 4 with undue haste and with the knowledge of the pending application before the Appeal Court for injunction in order to steal a march on Court and to face the Court of Appeal with a fait accompli. They have charged the Defendants Nos. 1 to 4 with fraud and have contended that the purported posting of alleged ballot papers should be rejected and the Court should direct the reprinting of ballot papers and posting of ballot papers should be done under the direct supervision and control of this Court. They are supporting the Plaintiffs and have stated that on the expiry of January 31, 1969, the members of the Executive Committee and also the members of the Election Board have become functus officio and they had vacated their office with the result an impasse has been created which was not for seen at all and the Court should remove this impasse by a suitable order as such removal is not possible under the rules of the Club.

14. From this stage the Defendants Nos. 1 to 4 will be collectively referred to as the contesting Defendants and the added Defendants as the supporting Defendants for the sake of convenience. The Defendants Nos. 2 to 4 and J. C. Guha will be referred to in their respective surnames and the supporting Defendant, Dr. Nripendra Nath Das, as Dr. Das. But the Plaintiff Bimal Kanti Ghosh will be referred to as Bimal Kanti as there are many witnesses whose surnames are also Ghosh.

15. More than two days were taken on the question of settlement of issues, and as I did not accept the contentions advanced on behalf of the contesting Defendants on some of the issues I told them that I would record in my judgment the reasons which I gave at the time of their argument in rejecting their contentions. Whatever I will now say is wholly confined to what I said at the time of settlement of issues. It was argued on their behalf that no issue should be raised on the factum, legality and validity of despatch of ballot papers at the instance of the supporting Defendants as that event had happened subsequent to the filing of suit. Their bone of contention was that the supporting Defendants were the Plaintiffs, and even though they did not file this suit they must compel the Plaintiffs to amend the plaint before these issues could be raised.

16. Without disputing the principle that the Court can take notice of subsequent events under exceptional circumstances their contention was that this was not

the case in which the Court should exercise its exceptional power. The Learned Counsel Mr. B. Das and Mr. Subimal Roy, appearing for the Defendants Nos. 2 to 4, further contended that if these issues as to the subsequent events were allowed to be raised the said Defendants would be seriously prejudiced, but when asked by me they were unable to indicate how and in what manner they would be prejudiced at all.

17. Minutes of the interlocutory proceedings including the proceedings in the Appeal Court were tendered by consent of all the parties at the time the case was opened before me and my attention was drawn to them in support of their respective contentions on the question of settlement of issues.

18. On December 6, 1968, Sabyasachi Mukharji J. passed an ex parte interim order of injunction restraining the contesting Defendants from issuing ballot papers until the final disposal of the said application and on Thursday, December 12, 1968, the said interim order was vacated with the observation that-

this Court doth desire that the Chairman and the Election Board should see that there is no scope for apprehension in the minds of the members of the Club.

On Friday, December 13, 1968, the Plaintiffs preferred an appeal being Appeal No. 229 of 1968 from the said order of December 12, 1968, and applied for interim orders, but the Appeal Court without passing any interim order gave them liberty to apply for such orders in the presence of the contesting Defendants and made the Notice of Motion returnable on Monday, December 16, 1968, which was served on the Solicitors for the contesting Defendants at about 3-30 p.m. on Friday, December 13, 1968.

19. On Monday, December 16, 1968, when the said application was called on for hearing, the Appeal Court granted leave to the Learned Counsel Mr. A.C. Mitter to appear for Dr. Das and after directions for filing the respective affidavits were given, the then learned Advocate-General appearing for the Plaintiffs told the Appeal Court that the Plaintiffs were willing to pay and bear the extra expenses that might be incurred for sending the ballot papers by registered post which was recorded in the minutes. The Learned Counsel Mr. S.C. Sen, who was appearing for the Defendant No. 1, then told the Appeal Court that all the ballot papers were already posted under certificates of posting which was also recorded in the said minutes and the Appeal Court on hearing it passed an interim order to the effect that "no further steps shall be taken until the disposal of this application" which was directed to be listed for hearing on the next date at 2 p.m.

20. On December 18, 1968, all the contesting Defendants appeared before the Appeal Court, and after hearing all the parties the following orders were passed by the Appeal Court, (Summary is only reported):

An advertisement will be inserted in newspapers at the expense of the Appellants to the effect that the ballot papers have been sent under certificate of posting to all the members on December 14, 1968, and members are to put their

completed ballot papers into the ballot box by December 22, 1968. Those who have not received ballot papers may apply in writing (upto January 7, 1969) to the President of the Club for a duplicate copy of the ballot paper which will be immediately sent to him by registered post with the Acknowledgment Due, and such ballot papers may be put in the ballot box by January 20, 1969. The extra expenses that may be incurred in this behalf will be borne by the Appellants in the first instance. The Appellants will send to the Solicitor for the Respondent Club Rs. 1,500 by tomorrow towards expenses for the advertisement and the Appellants undertake to Court to reimburse the Club for any extra expenses that may be incurred for sending the ballot papers by registered post with acknowledgment due, and if there is any shortfall the Appellants undertake to pay the same. The counting of both sets of ballot papers will commence from January 21, 1969.

The application will stand adjourned sine die with liberty to mention. No further steps need be taken in the appeal by either party until further orders.

21. In compliance with...(this) order ...the Plaintiffs sent (the money) to (the said) Solicitor which was accepted by him, but on December 20, 1968, the said order dated December 18 was mentioned (at his instance) and the Appeal Court made the following order. (Only gist is reported):

The ballot box shall be kept by Ranadeb Chaudhuri, properly sealed in his personal custody. No further steps in regard to the election shall be taken until 2 p.m. on Monday, the 23rd December, 1968, or until further orders. Advertisements in the papers shall remain stayed until further orders.

22. On December 23, 1968, the Appeal Court made an order, by agreement of the parties, to the effect that interim order which was passed by the Appeal Court was to continue pending the disposal of the appeal and the cheque sent by the Plaintiffs should be returned to them.

23. For several days the said appeal was heard and the Defendant Bhattacharya and one Deba Prosad Chatterjee gave evidence for the contesting Defendants. I will briefly indicate the nature of evidence given by Bhattacharya only. He said that he posted about 6,000 ballot papers under certificate of posting on December 15, 1968, from General Post Office, Shyambazar Post Office and Elgin Rd. Post Office. Exhibit A in Appeal Court is a bunch of printed certificates of posting forms and...before me they are Ex. G/I. Exhibit which in the Appeal Court is a carbon copy of a typed script list consisting of 168 pages (starting with p. 7 and ending with p. 173) which contains the names and addresses of the ordinary voters with serial numbers. On the reverse of each page postal stamps are affixed bearing postal seals all dated December 14, 1968. This exhibit before me is Ex. G/2. Some witnesses were also examined on behalf of the Plaintiffs in the Appeal Court and they said that no ballot papers were received by them. The Appeal Court delivered a short judgment relevant portion of which is set out

hereunder:

The most important question in this appeal is whether there should be an injunction as prayed for restraining the Defendants from holding any election of the Executive Committee of the Club except under the supervision of the Court and also for an injunction restraining the Defendants from dispatching any ballot paper except by registered post. Another relief asked for is that the election be held under the supervision of this Court. The important allegations in the plaint are to be found in paragraphs 16, 18 and 22 of the plaint. They turn on the principal question that the ballot papers have not been properly posted under certificate of posting in accordance with the rules of the Club.

Evidence was led on this question in the Appellate Court because suggestion had been made whilst this matter was heard in part by the Appellate Court on 25th March, 1969, and on the subsequent dates that the Defendants were ready to adduce evidence on this aspect of the case.

The question as to whether there has been proper certificate of posting is an issue, if not the most vital issue in this case. Right from the beginning it was felt that this question is one of the disputed fact and bristles with controversies.

It has been the view of the Appellate Court in the unreported decision dated 14th August, 1963, in Appeal No. 139 of 1963 in the case of Sambhu Prosad Bajoria v. Tribeni Debt and Ors. that at the hearing of an interlocutory application the Court should not record a finding on the merits of the case. It cannot be denied that the case here is whether there has been proper compliance with Rule 38 of the rules of the East Bengal Club, namely, whether the Election Board has posted under certificate of posting the ballot papers to each voter. We are of opinion that any opinion expressed on this question will be an adjudication on the merits of the case.

24. The Court, under exceptional circumstances, can take notice of subsequent events in order to give relief to a Plaintiff or to shorten the litigation or to adjudicate completely the disputes that may arise between the parties after the institution of the suit in order to avoid multiplicity of proceedings. The Court has further power to mould the decree according to the circumstances existing at the time of hearing of the suit. Whenever circumstances exist issues as between the co-Defendants should be raised, settled and decided in order to give relief to a Plaintiff.

25. Under Order 1, Rule 8, Sub-rule (2) of the CPC any person on whose behalf or benefit a suit is instituted is entitled to apply to be added as a party to such a suit. When any one is added as a Defendant under this rule he is entitled to file his written statement. He may support the Plaintiff or he may contest the suit and the Court cannot shut out the pleas taken by him in his written statement. On the other hand, if a party is added as a Plaintiff he must adopt the plaint, and if he wants to rely upon any new plea he must apply for amendment of the plaint for incorporating it provided his co-Plaintiff agrees.

26. After considering the relevant facts the Appeal Court made an order adding the supporting Defendants as parties to the suit. The Appeal Court did not add them as co-Plaintiffs and they cannot be the co-Plaintiffs under any circumstances. This order of the Appeal Court, until set aside by the Supreme Court, if at all, is binding on all parties including this Court at every stage of the proceeding in this suit on the principles laid down by the Judicial Committee in *Ram Kripal Sukul v. Musst. Rup Kumari* 55 C.W.N. 749 (755).

27. The contesting Defendants called witnesses before the Appeal Court to prove that ballot papers were posted under certificate of posting. Similarly, the Plaintiffs examined witnesses who said that they did not receive their ballot papers. After all these evidences were adduced, it was contended before the Appeal Court that the factum and validity of posting of ballot papers should not be decided as it will prejudice the merits of the suit.

28. By allowing oral evidence to be led, the Appeal Court took notice of subsequent events that had happened and in their Lordships' considered opinion one of the important questions to be decided was whether the ballot papers were properly posted under certificate of posting in accordance with the rules of the Club. On this question the contesting Defendants were not only ready to adduce evidence but adduced some evidence also before the Appeal Court and the Appeal Court expressly held:

The question as to whether there has been proper certificate of posting is an issue, if not, the most vital issue in the case. Right from the beginning it was felt that this question was one of the disputed facts and bristles with controversy.

Their Lordships further held:

It cannot be denied that the case here is whether there has been proper compliance with Rule 38 of the rules of the East Bengal Club, namely, whether the Election Board has posted under certificate of posting the ballot papers to each voter.

29. The Appeal Court accepted the contentions of the contesting Defendants that these important questions should not be decided as they were hearing the appeal from interlocutory order. The contesting Defendants by way of defence before the Appeal Court took the plea that the ballot papers were duly posted, and the same being the principal question involved in this suit should not be tried by the Appeal Court, but now they turn round and contend before me that such a question should not be allowed to be raised and no issue should be settled on this question. They have taken the defence in the written statement that the ballot papers were duly posted in strict compliance with the rules of the Club, and now they say that although they have pleaded so, still no issue should be settled. In my opinion, they are not permitted to take such an inconsistent position and are not entitled to blow hot and cold and treat the Court in such a fashion.

30. The Appeal Court in *Rungta and Sons Put. Ltd., Calcutta and Anr. v. The Owners, Master and Parties interested in S.S. Edison and Anr.* held:

The Court however in taking notice of subsequent events is guided by two principles, first, that it will not cause prejudice to the other side. Such prejudice may occur by reasons of there having been no proper issue and therefore no opportunity having been given to the other side to meet the case with regard to events of which subsequent notice is desired to be taken. Secondly, the Court may take notice of subsequent events to shorten the litigation and for the ends of justice. (Italics are mine).

31. The Defendants Nos. 2 to 4 having set up the subsequent events, namely, the alleged posting of ballot papers after the institution of the suit by way of defence cannot suffer any prejudice whatsoever. Not only so, they adduced evidence before the Appeal Court to prove that fact and I failed to understand how and in what manner they could suffer any prejudice if those issues were settled. The Appeal Court in the unreported judgment quoted above expressly held that proper issues as to subsequent events should be settled so that the parties may get an opportunity to meet them and if such issues are not settled the parties may suffer prejudice. In view of the said unreported judgment of the Appeal Court and in view of what had happened before the Appeal Court and the pleadings in the suit, it was incumbent that issues as to subsequent event should be allowed to be raised and should be settled by me.

32. The Learned Counsel appearing for the contesting Defendants could not indicate why the events that had happened subsequent to the institution mentioned above were not of exceptional character and I failed to section after due deliberation, why they were not so.

33. The supporting Defendants are not the co-Plaintiffs and they cannot compel the Plaintiffs to amend the plaint by incorporating the pleas taken by them in their written statements and, moreover, question of amendment of the plaint in the instant case does not arise at all in view of what had happened before the Appeal Court. If the supporting Defendants can substantiate their pleas, the Court should take notice of them in order to give relief to the Plaintiffs. Similarly, if the contesting Defendants can substantiate their defence the Plaintiffs will be non-suited.

34. For all these reasons I was unable to accept the contentions advanced on behalf of the contesting Defendants and settled the following issues on May 14, 1969. (Main issues are only reported):

(2) Unreported decision of the Calcutta High Court, dated December 20, 1968, in Appeal for Original Decree No- 189 of 1961 Issues:

1(a) Are the members of the Election Board within the complete domination or influence of Jyotish Chandra Guha as alleged in para. 14 of the plaint ?

(b) Are the members of the Election Board nominees of Jyotish Chandra Guha as

alleged in the said paragraph ?

* * * *

3. Did the Defendants Nos. 1 to 4 intend to permit other persons to get hold of a major part of ballot papers so that there might be a "rigged" election in fraud of the rules of the Club as alleged in para. 16 of the plaint ?

4. Are the Defendants Nos. 1 to 4 conducting "the election faithfully, fairly, honestly, properly and in strict compliance of the rules of the Club as alleged in paras. 17, 18 and 21 of the written statement of the Defendants Nos. 2 to 4 ?

5. Are the Defendants Nos. 1 to 4 intending to, hold a sham election for the purposes alleged in para. 18 of the plaint ?

6. Are the apprehensions of the Plaintiffs wholly unwarranted and without any basis as alleged in para. 19 of the written statement of the Defendants Nos. 2 to 4 ?

* * * *

8(a) Did the members of the Election Board despatch the ballot papers as alleged in para. 20 of the written statement of the Defendants Nos. 2 to 4 ?

(b) Were such dispatches of ballot papers made under certificate of posting ?

(c) If so, are the certificates valid and legal ?

(d) If so, were such dispatches made with undue haste and with the knowledge of the pending application before the Appeal Court in order to steal a march on the Court or to face the Court of Appeal with a fait accompli as alleged in para. 14 of the written statement of the added Defendants ?

(e) Did the members of the Election Board despatch the said ballot papers in usual course of their duties or lawfully or bona fide ?

(f) Were such posting of ballot papers made strictly in accordance with and in compliance of the relevant provision of the rules of the Club ?

(g) Were the ballot papers not received by the added Defendants and many other voters as alleged in the written statement of the added Defendants ?

* * * *

10. Have the Plaintiffs any right to file this suit on behalf of other members of the Club ?

11. Has this suit been filed for the benefit and in the interest of the Club and its members ?

12. Are the Plaintiffs mere nominees or benamdars of Nishit Chandra Ghosh as alleged in the written statement of the Defendants Nos. 2 to 4 ?

13. Is the suit maintainable at the instance of the Plaintiffs?

* * * *

16. Has the Court any jurisdiction to grant any relief to the Plaintiffs ?

17. What relief, if any, are the Plaintiffs entitled to ?

35. It is necessary to record here that when the hearing of the suit commenced on May 9, 1969, I was told on behalf of the contesting Defendants that their main purpose of defending this action was to establish that the Court had no power nor any jurisdiction to interfere with the election of officials of the Club. And, of course, without even touching all relevant facts and evidence on record it was bitterly contested for a large number of days as if to uphold such a noble and great cause until it came to an end on July 18, 1969.

* * * *

36. From 1946 to 1958 Guha was General Secretary of the Club and he resigned from that post sometime in January 1959. With the help and assistance of many well-known people of Calcutta he made this Club as one of the leading clubs in football and its fame is no longer confined within the boundaries of this country. This is but the one side of the picture and the other side is that during his regime the Club was involved in a number of litigations in this Court and in other Courts. In some of those litigations his closest friends were involved either as Plaintiffs or as Defendants and he was the central figure in all those litigations. And during his regime, for the first time in the history of the Club, election had to be held under the supervision of this Court in the year 1950.

37. During his absence from the Club, election for the year 1960 was held under the supervision of this Court and ballot papers were sent to the voters under registered post. In 1962, the then rules which provided for sending of ballot papers only under certificate of posting was changed and the present rule was substituted in its place and in the very same year the ballot papers were sent under registered post. In 1964, the election was again held under the supervision of this Court and the Defendant No. 1 was appointed Special Officer to hold it, and under the direction of this Court he sent the ballot papers under registered post. This election of 1964 was held in April /May 1965 (and) Guha was elected as General Secretary, Dr. Das as one of the members of the Executive Committee and Nishit Chandra Ghosh as the Treasurer of the Club. In the first meeting of the Executive Committee, Roy was elected as the President and Dr. Das as one of the Vice-Presidents of the Club.

38. Roy acted as the Chairman and Bhattacharya as the Convener of the Election Board which conducted the next election held in December 1965. Dr. Das was not a candidate in that election and the ballot papers were said to be posted under certificate of posting. Guha was again elected as the General Secretary of the Club. In the first meeting of this Executive Committee the Defendant No. 1 was elected as the President and three Vice-Presidents were elected, two of them

being Dr. Das and Roy.

39. In October 1968, this Executive Committee started making preparation for the election which is the subject-matter of this litigation. By a letter dated October 2B, 1968, Dr. Das made a request to the Defendant No. 1 to send the ballot papers by registered post to all the voters, but the Defendant No. 1 did not give any reply to this letter.

40. On November 23, 1968, the Election Board was formed. By another letter dated November 26, 1968, Dr. Das again requested the Defendant No. 1 to send the ballot papers by registered post. No reply was also given to this letter. On November 27, 1968, 200 members in writing requested the Election Board to send the ballot papers by registered post as stated in the plaint. No reply was similarly given to this memorandum.

41. On November 30, 1968, scrutiny of nomination papers took place in the Club tent, and on December 6, 1968, this suit was filed and the order of injunction was issued as stated above. On December 12, 1968, the said injunction was vacated and on December 13, 1968, the appeal was preferred but no interim order was made by the Appeal Court.

* * * *

42. According to Guha, in that election (of April/May 1965) many ballot papers were incorrectly addressed and they came into the possession of dishonest postal peons which were sold by them for Rs. 10 to 15 per ballot paper (But in answer to the Court's questions). Guha categorically said that the peons "just throw" away the registered ballot papers and then untruly said, "I did not say about the registered post; I said about certificate of posting. He said that many members knew about these facts including the members of the Executive Committee and he did not discuss with anybody excepting with Roy who was then the President of the Club but (then) he said, "we talked about this amongst all the members".

43. In the memorandum signed by about 600 members (Ex. 016), in the written statement of the contesting Defendants and in the affidavit of Roy, this story spun by Guha from the witness-box did not find its place. The witnesses called by the contesting Defendants said nothing about this story and of all persons Bhattacharya categorically said that he had never heard of such an interesting story. I have no hesitation in coming to the conclusion that Guha was deliberately inventing this false story from the witness-box in order to justify that under no circumstances the ballot papers should be sent under registered post.

44. When (Bhattacharya) said that the original voters list was given to an unknown typist of Lalbazar (for typing) it fell on me as a bolt from the blue.

Not only he made over the original voters list to the unknown typist of Lalbazar but that typist might have also distributed the pages of the original voters list to other typists who were also unknown to ""Bhattacharya and that benevolent typist charged Rs. 10 for typing 168 pages containing more than 4,800 names

and addresses with serial numbers is a story which he thought could be swallowed by the Court without producing the receipt for a paltry sum of Rs. 10. He admitted that Ex. G2 was a carbon copy and then said, "how would I know how many copies he prepared. I asked from him one copy."

45. Guha said that he did not know that Bhattacharya had said that Ex. G2 was typed by a typist of Lalbazar and now it is necessary to set out Q. 1038 put to Guha:

Q. 1038. And further Mr. Bhattacharya said that this typist charged Rs. 10 for typing out this particular document ?

46. And for the moment Guha was completely taken off his feet; how could an ordinary member like Bhattacharya surpass the General Secretary of the Club in tattling such a tall story and how could Rs. 10 be the common feature in both the tales ? And in a momentary breathlessness his exclamation--"for the whole document ?" resounded the four corners of the wall Guha went further and said that Rs. 10 was "too small a sum" and it was absurd to type it for Rs. 10 "unless one does it on gratis". Moreover, Guha admitted that Ex. G2 was typed in the office of J. K. Roy Chowdhury, Solicitor.

47. Leaving this deliberate falsehood created by Bhattacharya from the witness-box, he said that in the evening of November 24, 1968, Guha gave him the final voters list, a letter from the Presidency Postmaster regarding certificate of posting forms and "other things" And naturally his memory will conveniently fail on these inconvenient questions like the disappearance of the mysterious typist in the crowds of Lalbazar, and before going to the next topic I will record here that all the counsel appearing for the contesting Defendants did not even touch the evidence of Guha and Bhattacharya at all and I hold that Ex. G2 was not typed in Lalbazar but it was typed in the office of J. K. Roy Chowdhury and it was Guha who handed over this exhibit to Bhattacharya. I said before that Bhattacharya was falsified by Guha and now I say that Bhattacharya has deliberately given false evidence, and I reject this part of his evidence. Leaving Bhattacharya for the time being I will now go to the Club tent for a moment.

48. Sometime in October 1968 voters list was approved by the Executive Committee and was posted on the notice board of the Club. On October 28, 1968, Dr. Das wrote a letter to the President material portion of which is set out hereunder:

Some changes have been made in the constitution of the Club the most vital of which is the holding of the general election every three years instead of annually as was the previous rule. It is therefore most desirable that the election be held fairly and freely For a fair election the ballot papers should reach every member and in order to ensure that the ballot papers should be sent through registered post with acknowledgement due which in the opinion of the majority of the members of the Club is the only way to conduct a fair election.

Expecting an early reply.

49. During this time the Defendant No. 1 as a candidate to the State Assembly was busy in the mid-term election and Guha used to meet him practically every day in his house to help him in that election. Guha denied that the Defendant No. 1 handed over this letter to him and he said, "I do not remember, I have not seen this letter even" He said that the Defendant No. 1 told him that the Defendant No. 1 had a talk with Dr. Das and he was requested by Dr. Das not to send the ballot papers under certificates of posting and Dr. Das wanted the ballot papers should be sent under registered post and (he said) that the Defendant No. 1 "just gave this information of Dr. Das"s sending this letter to him.

50. It is true that the Defendant No. 1 has not come to the witness-box, but it is unthinkable that he would not show this letter to Guha although he had a discussion with him about it. Guha is the General Secretary of the Club and he is in charge of the correspondence of the Club. This letter of Dr. Das is not a personal letter to the Defendant No. 1. It was written by the Vice-President to the President of the Club regarding the coming election. It is a disclosed letter and the suit was being contested tooth and nail and still Guha said that he did not see "this letter even" is a statement which I am unable to accept. Impression that I have of Guha is that he was deliberately suppressing the truth as he on November 2, 1968, wrote to the Presidency Postmaster-General. As our Club will hold the general election in December, according to our rules we shall have to post the ballot papers either under certificate of posting or by any other method that may be decided by our committee. To make advance preparations we would request you to deliver 1,700 certificate of posting forms as there are over 5,000 members and each form will accommodate three names only. In case it is permissible to write down the names and addresses in one paper we can get them typed and submit it with ballot papers at the counter. Please help us in the matter.

51. This letter of November 2, 1968, was not sent by post but was handed over directly. On November 8, 1968, Guha personally went to the office of the Postmaster-General to receive the reply dated November 8, 1968, which is also set out hereunder:

Kindly refer to your letter dated 2nd November, 1968, regarding supply of 1700 certificate of posting forms for use in lump posting of ballot papers.

As the stock of such form in this office is not sufficient to meet your demand you are requested kindly to use plain papers with manuscript or typewritten entries for the purpose. Some forms are enclosed in this connection.

52. Draft of this letter is also dated November 8, 1968, which contains many corrections was. tendered in. the Appeal Court and -was also tendered before me and at the foot of this-draft it is written "to obtain (2) copies only.

53. On the letter dated November 2, 1968, Guha inter alia, said that he wrote it

as he wanted that the rules of the Club have got to be followed because as the General Secretary of the Club it is my duty to see that the rules are observed; from the point of view that they are not delayed and the election is not held up beyond the usual date, I have written this letter to them. On December 8, 1968, he personally saw the Deputy Postmaster-General when the letter dated November 8, 1968 was handed over to him with some certificate of posting forms. He was asked what did he do with that letter after receiving it from the Postmaster-General and his answer was, I kept it pending with me in my file and after the Election Board was formed. I handed over the letter on 24th to Arun Bhattacharya. (*Italics are mine*)

54. Exhibit L is a copy of the letter dated November 8, 1968, and Guha had signed it in acknowledgement of receipt of the original and he was asked why he personally went to the Office of the Postmaster-General to collect certificate of posting forms and his answer was-

It was very clear in that letter I have stated categorically that for the advance preparation they wanted to do it. If they do not get this they would not be able to finish election at that time.

It is to be noted here that at that time the Election Board was not even (been) formed (and) his evidence to the effect that "they wanted to do it" sufficiently indicates that dispatching of ballot papers under certificates of posting was already decided and clearly reveals in which way he was moving.

55. He said that he knew few clerks in that office who were members of the Club and it was his duty to know them. He admitted that certificate of posting forms were available in all Post Offices but he did not collect them from those Post Offices. He said that without making any appointment and without knowing the Deputy Presidency Postmaster-General he officially met him for receiving the original letter dated November 8, 1968, and he had never seen the draft before which was not drafted in his presence. He said that the original letter was lying ready and was going to be sent when he went to the office of the Presidency, Postmaster-General for the second time and on the very same day to bring the copy. He could not explain why in the draft it was written that two copies were to be supplied although he did not ask for the copies by saying "this is the first time that I see this" (He firstly) said that he asked for a copy from the Deputy Presidency Postmaster, "and then it was typed out", and "after it was typed out it was handed over" (*Italics are mine*) (to him, but then) after comparing he admitted that Ex. L dated November 8, 1968, is the carbon copy of the original letter dated November 8, 1968, and the copy was not separately typed.

56. With regard to the original letter he previously said that he kept it in his file and made it over to Bhattacharya on November 24, 1968, (Q. 94), but when he was shown the copy of that letter he came out with the story that the original was missing. The draft of that letter dated November 8, 1968, clearly shows that two copies were to be supplied although he said he did not ask for copies. His

story about going twice on November 8, 1968, to the office of the Presidency Postmaster-General is afterthought. He said, at first, that the copy letter dated November 8, 1968, was typed out and it was handed over to him and thereafter he changed his story and said that the clerk went (inside) and came back and handed over the copy of that letter to him. The reason given by him for going to the office of the Presidency Postmaster was that "otherwise the matter would be delayed for months". And what a prompt action was taken by the postal authorities in the meantime. The draft was already corrected by an able hand and the original letter dated November 8, 1968, was about to be dispatched by 10 a.m. Nay; the exact number of printed certificates of posting forms to be utilized for the exact number of life members for the purpose of sending ballot papers were about to be dispatched along with the original letter. And he simply went in the chamber like an innocent child and, of course, for a child no prior appointments were necessary and took them and left the chamber. These stories should not have been told in this Court and I have no hesitation to record here that Guha has no regard for the truth.

57. Roy was asked whether any attempt was made to collect printed certificate of posting forms from other Post Offices and his answer was "that I cannot tell you. Mr. Arun Bhattacharya will tell you that" and I have heard that they tried but they could not" He was asked, "who are they ?? and his answer was "Arun Bhattacharya--they told me that they tried but it was not available". But Bhattacharya did not say that any attempt was made by him to collect the certificate of posting forms. Evidence of Roy is wholly untrue for the simple reason that neither Bhattacharya nor those alleged "they" ever had any occasion to make any such attempt in view of the letter dated November 8, 1968, procured by Guha and Guha himself (had) said that no one was sent to any Post Office to collect certificates of posting forms.

58. As the evidence of Roy and Bhattacharya on the letter of Dr. Das dated October 28, 1968, is interlinked with another letter of Dr. Das dated November 26, 1968, and the memorandum of 200 members dated November 27, 1968, I will deal with these three exhibits together-

In examination-in-chief Roy did not say anything about these exhibits. In cross-examination he said that he did not see those two letters of Dr. Das and he had no personal knowledge about them and those two letters were never placed in the meeting of the Election Board and none of them were considered by the Board. (And then he said) that he had a "great discussion" with the Defendant No. 1 either on November 24 or 28 about posting of ballot papers and it was decided that they "must follow the rules of the Club" as "most probably somebody insisted" on sending ballot papers by registered post This witness in his affidavit on oath categorically said, "no reply was given to" the letters (of Dr. Das)"because the manner of sending the ballot papers should be kept secret" and still he on oath from the witness-box said, "that is not a fact" and then further falsified himself by saying that the statements (made) in that affidavit

were correct.

59. On the memorandum of 200 members Roy in his affidavit on oath said, "I say there was no necessity of giving reply to the said letter", but still from the witness-box said he did not see (it) -

but heard about (it) This is but a small instance of how far this witness can go. His attention was specifically drawn to para. 21 of the said affidavit where he, inter alia, said that Nishit Ghosh -has procured the signature of some members of the Club in the said letter dated 27th November, 1968 which he has verified as true to his knowledge and still he repeated that he did not see this memorandum.

It is clear from his own evidence discussed above that he was not telling the truth.

60. Now let us see what Bhattacharya has said.-

Election Board was formed on November 23, 1968, and his definite case was that before the first meeting of the Election Board was held the Defendant No. 1 gave him three letters, viz. (i) letter written by Dr. Das, (ii) Ex. 003, i.e. memorandum dated November 27, 1968, and (iii) another memorandum signed by about 600 members (Ex. 016). He further said that he did not show those three exhibits evince to Roy or to Nandy and did not place those letters in any of the meetings of the Election Board but contents of those documents were discussed in the meeting of the Election Board. Roy on the other hand said that none of these letters were discussed in any of the meetings of the Election Board. Bhattacharya said that on November 24, 1968, he contacted the Defendant No. 1 on telephone and he was asked by the Defendant No. 1 to meet him on the following day. He went to the residence of the Defendant No. 1 at about 8/8-30 in the morning of November 25, 1968.

On November 25, 1968, he received from the Defendant No. 1 the letter dated October 28, 1968, (Ex. 001), memorandum of 200 members (Ex. 003) and memorandum of about 600 members (Ex. 016). He said that these three applications were before them and they discussed about them. His answer to Q. 899 will reveal what a fantastic lie this witness can create from the witness-box which is set out hereunder:

899. Would it surprise you to note that the letter 003 never saw the light of the day before the 27th November ? I got this letter from Chowdhury.

61. On November 25 this memorandum dated November 27, 1968, (Ex. 003) was not with the Defendant No. 1, still the witness said that he received it on that day from the Defendant No. 1-

We discussed all these things, the contents of this application" (in the meeting of the Election Board).

If this evidence of Bhattacharya is true then Roy must be an untruthful witness and if on the other hand it is untrue then Bhattacharya is no less an untruthful

man than Roy.

62. These answers of Guha clearly reveal that he was supporting the group who were collecting signatures for sending the ballot papers under certificate of posting. He admitted that there were two groups, one was supporting him and the other (one was) opposing him. The slip of paper (Ex. S/2) attached to Ex. 016 sufficiently indicates that he was not telling the truth when he said that he had not even seen Ex. 016. Letter dated November 2, 1968, the original and the copy of the letter dated November 8, 1968, and Ex. 016 clearly indicate in which way Guha was moving. He went personally to the office of the Postmaster-General to receive the letters mentioned above including the certificates of posting forms and his untrue evidence as to the loss of the original letter and his false statement that he had not seen Ex. 016, in my opinion, conclusively show that he wanted to constitute the Election Board in such a manner that his wishes would be carried out by the members of the Election Board. Moreover, apprehended litigation being in the air Guha wrote the letter dated November 2, 1968, and procured the letter of November 8, 1968, to create evidence which he thought would help him, but instead of doing so they have completely boomeranged on him.

63. Bhattacharya gave evidence on April 24, 1969, in the Appeal Court and his evidence was tendered as Ex. 014 before me.-

His evidence before the Appeal Court was that there were altogether three or four meetings (of the Election Board) and generally all of them were held in the evening at the residence of Roy and he personally contacted the Defendant No. 1 all the time because the Defendant No. 1 could not attend those meetings. Leaving Bhattacharya at this stage I will now come to Roy on the question of meetings of the Election Board. He was asked, "Did the Election Board hold any meeting?" and the relevant portion of his answer was, "Yes, two meetings were held, one on November 25, 1968, and another on November 28, 1968. Meetings were held in my chamber and in my presence.

64. Pausing here for a moment it is necessary to say here that on Friday, May 9, 1969, at the time of opening the case when Mr. Mitter was placing the relevant rules of the Club, I casually remarked that under the relevant rule some one should be authorised by the Election Board to post the ballot papers, and on May 12, a minute book was disclosed Two minutes are contained in (it which is) a big book containing a large number of pages and on the second page Ex. 05a was written. The date of this meeting is put at the top of the left-hand corner in figures "25.11.68". Ink in which the body was written was different from the ink by which Naiidy, Bhattacharya and Roy had signed. Some corrections were made by overwriting and some of them were initialed and some of those overwriting seem to be in different ink. Main decisions recorded were:

(a) Bhattacharya was to act as a Convener of the Board;

(b) Final scrutiny of the nomination forms was to be held on 30th November,

1968, and

(c) The candidates might withdraw their names on 3jrd December, 1968.

65. Most striking feature of this minute dated November 25 is that in the body it is recorded that the meeting was held "at 8-30 a.m. at No. 298 Bagmari Road (Bagman Villa), Calcutta-54". (Italics are mine). Coming back now to Roy he categorically said, "there were only two meetings of the Election Board" and proceedings were recorded in the minute book. Roy acted as the Chairman of the meetings and he said that scrutiny of the nomination papers took place on November 30, 1968, in the Club tent. He said that the scrutiny was not made by the Election Board and it was not a meeting of the. Election Board. He said that in the meeting of November 30 the Defendant No. 1 was not present and he did not remember whether Nandy was present or not. He repeated that only two meetings of the Election Board were held and he was absolutely sure of that But then he said another meeting for scrutiny of the nomination papers was held on November 30, 1968, at the tent but no record was kept of that meeting. (Italics are mine) In Qs. 976-977, he falsified what Bhattacharya had told the Appeal Court. Not only so his categorical statement before me in Q. 975 was that the minute of the meeting of November 30, 1968, was not recorded due to the facts that "all the nominations were found to be valid"-

* * * *

66. Rule 38(g) provides that the Election Board is to scrutinise the nomination papers, is to give its decision on any objection, is to make out a list of valid nominations together with the names and addresses of the candidates and is then to print the ballot papers in counterfoils in the form of inland papers. (Ultimately) Roy admitted that the Election Board met for the purpose of scrutinising the nomination papers and that it was the meeting of the Election Board which he denied previously and his categorical state-merits before me was that the minute of such an important meeting was not required to be recorded in the minute book and they did not think it necessary to write out the minute of November 30, 1968.

* * * *

67. I will now come to the minute of November 28, 1968. At the left-hand top of the page the date in figures is given "28.11.68". This date is in different; ink including the line drawn under (it). The ink in which the signatures were made is quite different from the ink in which the body was written. The ink in which the body of this minute was written is in the same ink in which the meeting of November 25, 1968, was written. The most peculiar feature of this minute is that the words "and is usually held" in the body of the minute are written in completely different ink from the rest of the writings.

68. Genuineness of these two exhibits were challenged and still Roy must forget at whose instance these interpolations in the minute of November 28 were made

and Nandy must not face the Court?

According to Roy the date of election could not be fixed until the scrutiny of nomination papers which took place on November 30, 1968, and still he wanted me to believe that the date of the election was fixed on November 28. There is no mention of the meeting of November 28, 1968, in his affidavit nor there is any whisper about the date of election and his answer, "it is not written so specifically? is nothing but a deliberate distortion of his own affidavit.

Regarding the non-disclosure of the minute book in the affidavit of documents he said, "I do not know what is the legal implication there, whatever was necessary it would be done by our lawyer" He being a practicing lawyer of this Court I do not hesitate for a moment to reject (it).

Roy has totally failed to explain why different ink was used.

I (will) only say here that I do not accept his evidence as to the interpolation of those words. In Q. 687 it was suggested to him by the counsel that those minute books were prepared later on for the purpose of this suit and his answer was: "No, it is impossible on my part to commit forgery. It was written on the very day the resolution was passed.

69. Bhattacharya said that these two minutes were written by him while they were being dictated to him (and the) minute of November 25, 1968, was corrected by him at the dictation of Roy And at the most convenient moment the last drop of ink must he exhausted from his pen otherwise how could he make these corrections by another pen ? And whose pen it was must also be forgotten as the ink is quite different from the rest of the writings. Ink used by Roy is quite different from the ink used by Bhattacharya for putting their respective signatures which are visible even to an one-eyed man but lest (Bhattacharya) should detect it he must make himself blind.

70. At this stage it is necessary to say that in the minute of November 25, 1968, it was, inter alia, written that the meeting was held at 298, Bagmari Road "at 8-30 a.m." and "Sri R. Chowdhury, Chairman of the Board being out of station, Sri Arun Roy presided over the meeting". (Italicised are mine)-

But according to Bhattacharya he met the Defendant No. 1 at about 8 or 8-30 a.m. of November 25, 1968, at the residence of the Defendant No. 1 and the Defendant No. 1 decided that the meeting should be held on the same day. He said that no time nor any place was fixed for (the) meeting and he contacted Roy on phone and suggested that the meeting should be held at the residence of Roy and then he sent a messenger to Nandy as Nandy had no telephone. He said that 25th was a Sunday). He had to admit that it was a Monday and then said that he went to the house of the Defendant No. 1 on the 24th morning but then again being confronted said that he went to the residence of the Defendant No. 1 between 8 and 8-30 a.m. on November 25 and from Ballygunge Circular Road he went straight to Bagmari.

71. The most vital statement he made (Qs. 283 to 286) was that at about 8 and 8-30 a.m. of November 25 he met the Defendant No. 1 at his residence and from there he went to his office and in Q. 273 which I left over he was asked--"the meeting of the Election Board according to you was held on November 25, 1968 and his answer was--"Yes, in the evening". (Italicised is mine). This evidence of Bhattacharya cuts at the very root of the genuineness of this minute of November 25, 1968 and this minute was challenged as a fabricated document. Roy said that it was impossible for him to commit forgery and still Nandy did not dare to come to the witness-box. Most serious self-destructive and contradictory evidence of these two witnesses and the avoidance of the witness-box by Nandy compel me to reject this minute of November 25.

72. On the minute of November 28 (Bhattacharya's) memory must fail, otherwise he would be "caught" and he must seek the aid of- the Defendant No. 1 by saying only Mr. Chowdhury can testify about the correctness of my statements". And alas ! Mr. Chowdhury did not come to rescue him from the unfathomed bottom of the sea. Now, let Bhattacharya (once more) speak for himself (and) again his pen betrayed him and he had to change the pen. With the changing of pen his case was also changed. If he had written the words "and is usually held" at the time of writing the said minute he could not have said, "I find that addition was also done by another pen", and his memory must betray him with the betrayal of his pen. Roy and Bhattacharya did not remember who had asked Bhattacharya to write "and is usually held" No one could say anything as to whom that glorious pen belonged although (this writing) on its face (is an interpolation).

73. Bhattacharya said that in the meeting of November 30, 1968, the Defendant No. 1 was present for sometime and "all nomination papers were found valid excepting one" Roy on the other hand said that the Defendant No. 1 was not present in that meeting and all nomination papers were found valid. Bhattacharya has falsified the evidence of Roy on (this) most vital meeting of the Election Board and this contradictory evidence of these two witnesses cannot stand together and they must fall together. This minute book came into light after those fateful observations were made by me. Genuineness of this minute book was challenged in cross-examination and still Nandy did not come to support his signatures. The date of the election could not be fixed by them as stated by Roy before the scrutiny of nomination papers, i.e. before November 30,] 968, and still it was recorded in the minute of November 28, 1968, that the ballot papers should be returned by December 22, 1968.

74. On December 13, 1968, the Notice of Motion was served in which it was specifically written that interim order would be prayed on December 16, 1968, and so holding of a meeting of the Election Board became absolutely necessary in order to decide whether the ballot papers should be dispatched or not before December 16, 1968, and it is on evidence that Roy and Bhattacharya decided to post them, but this fateful decision was not even recorded in this minute book.

This decision was the most vital decision as it was taken during the pendency of the application before the Appeal Court.

75. These vital omissions and deliberate commissions strike at the very root of the genuineness of this minute book and to lend a colour of honesty to those words "and as usually held" were inserted in the minute of November 28, 1968, at the brain wave of somebody, but this wave has washed away the very object for which those interpolations were made and has landed Roy and Bhattacharya in a bed of thorns. I have no hesitation in rejecting these two minutes including the book itself and in conclusion all that I need say here is that this book ought not to have been brought into existence at all as Guha himself had said that he had never seen any minute book of any Election Board as the General Secretary since 1946. Interim injunction was made on December 6 and the affidavit-in-opposition of Roy was filed on December 10. This injunction was vacated on December 12 and the Appeal Court did not re-impose the injunction on December 13 and was told on December 16 that the ballot papers were posted on December 14, 1968. The affidavit-in-opposition affirmed on December 16, 1968, by Roy was filed in the Appeal Court. Bhattacharya gave evidence in the Appeal Court on April 24, 1969, and the written statement was verified by him on April 30, 1969. And it was nowhere stated as to what was going on or had happened in the chamber of Roy between December 8, 1968 and December 13, 1968, as was told to this Court, and I will now enter into this fateful episode, and before I do so I should record here that the evidence I am now going to discuss was not even touched by all the counsel appearing for the contesting Defendants in the same way as they did not touch the evidence discussed previously. In order to appreciate the evidence on this aspect of the case it is necessary to say here that the ballot papers were printed with counterfoils in the form of inland letter papers and for convenience these inland papers will be referred to as ballot papers.

76. Let Roy open the doors of his closed chamber in his own way. His definite case in examination-in-chief was that, firstly, the Postal authorities could supply Ex. G/1 and this aspect I have already dealt with ; secondly, Ex. G/1 was utilized for sending ballot papers to the Life members. Part of this aspect I have dealt with previously, and regarding the posting of ballot papers I will discuss later on; thirdly, all names and addresses were written on the ballot papers from the voters list and the voters list was compared with Exs. G/1 and G/2 and the writings on the ballot papers were compared with Ex. G/2 ; fourthly, all things were done in his presence and in his chamber, and they were done "after 28th November, 1968, till 14th December"; fifthly, Ex. G/2 was utilized for sending the ballot papers to the ordinary voters, and lastly, all these works were done by Bhattacharya and four or five other persons.

77. I will first of all take up the voters list and for appreciation of evidence it is necessary to say here that on May 9, 1969, when the case was opened a cyclostyled copy of the voters list, Ex. 01, was tendered by consent and about 60

ballot papers, returned by Post Offices as undelivered to the respective addresses, were produced by Roy and they were kept in Court for identification and later on exhibited. Roy entered the witness-box on May 22 and in examination-in-chief he did not say anything about the original voters list which is Ex. M. In no uncertain terms Roy said that the names and addresses were dictated from Ex. 01 to the writers and the writings on the ballot papers were compared with Ex. G/2 and these two exhibits were copies of the same document excepting that one was cyclostyled copy and the other one was the typed copy. In Ex. 01 there is no serial number 2646 including the relevant name and address of the voter but in Ex. G/2 this serial number with name and address of the voter are written in ink. Those facts were admitted by Roy by comparing those two exhibits. Roy categorically repeated that the names were dictated from the cyclostyled sheets of papers which is Ex. 01 and the writings on the ballot papers were compared with Ex. G/2. These two exhibits were before him while he was giving (evidence) and when the aforesaid omission was found in Ex. 01 he immediately realised that he was caught and to escape he brought the original voters list in his chamber. On the next day, he entered the witness-box with a big and tied up voters list in his hand and of course without disclosing the same.

78. Out of those 60 ballot papers one was addressed to Kalyan Kumar Roy. On A. C. P. Road (Roy) said that he did not know any such road in Calcutta. It is quite clear that Kalyan Kumar's ballot paper was not correctly addressed with the result the ballot paper could not be delivered to him by the postal authorities. Moreover, the serial number 2646 and the name of Nani Gopal including his address are omitted from Ex. 01 and so Ex. 01 cannot be the correct copy of Ex. M (original voters list). Nani Gopal was not called to say that he had received the ballot papers and there is no evidence to show that his ballot paper was ever written.

79. A little bit of analysis will show (what Bhattacharya) intended to say. More than 300 pages of this exhibit (original voters list) tied up together were detached from the cover, knots were untied and the pages were distributed to the writers and again all the pages were tied up together according to the serial number of voters and they were attached inside the covers in the same fashion as was done by the mysterious typist of Lalbazar. Roy did not say that the pages of any voters list were distributed to the writers and (this) evidence of Bhattacharya is wholly false and I reject it.

80. The case of Bhattacharya firstly was that "only one" voters list was used for writing the ballot papers, and then he increased the number of voters list from one to two and the second one became the cyclostyled copy. In Q. 555, He said, Ex. G/2 might have been used and then in Q. 556 he said that two lists were used, one was the "original" and the other one was the "typed copy". Not only the entire cyclostyled copy of the voters list with its 88 pages vanished in the air in a split second but sharpness of his memory also suddenly became blunt by the

very sight of Ex. G/2 and one more "typed copy" of the voters list appeared in the scene. The most devastating effect of this testimony is that Bhattacharya falsified himself and whispered that Roy was a liner.

81. Now let us see first of all what Guha had said as Roy did not utter a single word as to who gave those lists and to whom. According to Guha, he delivered the manuscript of voters list and a cyclostyled copy to Roy on November 23. Then on November 24, this international football player passed on another cyclostyled copy of the voters list to Bhattacharya, but what a fall on the slippery mud of Ex. G/2 with a groaning voice "whether it was typed copy or cyclostyled copy, I do not know". But why should he not know if his case was true that he had personally given it to Bhattacharya and after all he never said that he had forgotten the script of the list ?

82. The most devastating and conflicting testimony about delivery of the original voters list and the extravagant real of these two witnesses about it coupled with the facts that Roy had said that the cyclostyled copy and Ex. G/2 were only used in his chamber and the avoidance of witness-box by the Treasurer have brought out the truth which has a peculiar "way of proclaiming itself through the mass of lie that the original voters list never left the custody of the Treasurer to whom it was given for making copies. And what a case I am to decide ! Of these untruthful trios whom I am to believe as to the use of these three exhibits ?

83. Now, I pass on to the associates of Roy and Bhattacharya including their numerical strength and respective whereabouts Roy said that four or five persons were working in his chamber with Bhattacharya. From four or five persons the number was reduced several times to three and then restored to four or five persons and then again it was fixed at six persons including Bhattacharya and lastly the numerical strength swelled upto seven with his Babu. But the worst part of it was from December 8 to 13, each and every evening all these persons (had) supposed to have assembled in his chamber and still Roy must not know the names of any one of his own associates although, according to him, everything was done in his presence. Were they ghosts to this respectable host ?

84. As Roy said that everything was left to Bhattacharya and it was Bhattacharya who collected all those people excepting, of course, his Babu--let the collector of people once more enlighten us:

* * * *

Numerical strength of these associates went on. increasing with the number of questions asked to these two witnesses. Nay, the birds of the same feathers must flock together and Bhattacharya must not know the names of the persons collected by Roy for the same reason as he must not know the name of the mysterious typist of Lalbazar and, similarly, Roy must not know the names of the associates of Bhattacharya, and still all of them must work together hand in gloves in the presence of both Roy and Bhattacharya from December 8 to 13 each and every evening for more than three hours in the same place, and, of

course, 4,800 ballot papers must be written before December]4, otherwise how could it be said to the Appeal Court on December 16 that all of them were posted.

85. According to Roy, excepting on November 25 and 28, Nandy never came to his house, but according to Bhattacharya, at least on two other dates, Nandy the alleged Field Inspector of L.I.C. suddenly visited the field and inspected everything and then put his initial on some ballot papers. According to Roy, the Defendant No. 1 never came to his house, but according to Bhattacharya, on the 13th night the Defendant No. 1 went to the chamber of Roy and counted the ballot papers along with Roy. Pausing here for a moment, if the version of this witness is true then let us count the numerical strength on December 13 ; Bhattacharya with his five associates, Roy with his Babu and four other associates and, of course, both having equal strength and then the President of the Club. What a coincidence ! Thirteen persons assembled on the inauspicious night of December M5 in the chamber of Roy to launch the counter offensive on the following day to crush the "renegades", and still Roy would not know the names of the associates of Bhattacharya and similarly Bhattacharya would not know the people collected by Roy and one must say that the President was there and the other one will deny it. Still let us see and try to ascertain, if possible, the total number of people assembled in the chamber of Roy.

86. 60 ballot papers mentioned above were opened in Court and all of them were either signed or initialed by P.R. Guha, B. Guha, A. Sen, S. Sen and many other people Bhattacharya could not say anything about these mysterious initials and did not come out with story which (he) later on told to (this) Court.

87. Several days have passed in the meantime and naturally it became now necessary for Bhattacharya to unfold his. untold story:

* * * *

(He on previous days said) that Roy put signatures (in the ballot papers in his) presence, but he now says that Roy also took the assistance of some other men. So far as the President was concerned Bhattacharya (said that he) handed over 500 ballot papers to (the President) although Roy (had) said that ballot papers never left his chamber. Bhattacharya did not know who were those associates of Roy and the President and those associates did not put their respective initials in his presence. In order to avoid repetition I will finish this part of the case before I come back to the numerical strength of the associates.

88. The procedure described by this witness if true clearly shows that there was no scope for initialing the ballot papers by those unknown associates as initialing and sealing of the ballot papers were simultaneously done. And still this witness said that he did not know those persons who have put their respective signatures. This witness deliberately avoided to answer the question put to him but one thing to be noted here is how the foundation was laid (by him)"for changing the story when he said, "I sent the bunch ?01; the signature of Mr. R. Chaudhuri". He will not mention the names of those persons whose signatures

appeared in the ballot papers excepting the names of Roy, Nandy, Mr. Chaudhuri and of himself although the ballot papers were written in his presence and were sealed in his presence. His entire story was falsified when he said: "Initials were not put, I cannot say whether all initials were put at the same time, but initials were simultaneously put during the period of working". How this serious self-destructive evidence can stand together is beyond my imagination.

89. Now let us see how far this witness can go. He said in Q. 1150, "I went personally to Mr. Chaudhuri's residence and handed over a bunch to him for putting his signatures". Then, as I said before that he laid the foundation by saying "I sent the bunch for the signature of Mr. R. Chaudhuri", let us see what this man meant by that. These answers speak for themselves and still if any comment is required I will only say what a falsehood can be created by this man: Let us proceed further with the evidence of (Bhattacharya). All records regarding the serial number of the ballot papers vanished in the air with the diary like the cyclostyled copy of the voters list. But writings on the ballot papers remain and here his vanishing power completely failed.

90. Guha admitted in his evidence that B. Guha and P.R. Guha were his relations, but when the initials of (these two Guhas) on some (of the) ballot papers were shown to Guha he feigned ignorance about their signatures. He also did the same thing with all the signatures appearing in the ballot papers. Roy failed to say anything about these mysterious signatures and the initials on the ballot papers and did not say that he took the help of any person for doing these ill airs. Not only so, Roy categorically said that everything was left to Bhattacharya and it was Bhattacharya who did everything and so it is not necessary to go to the evidence of Roy or Guha on this aspect of the case to show that they were also no less untruthful witnesses than Bhattacharya as there are enough materials to which I shall have to refer while I proceed.

91. The numerical strength was no longer confined to 13 persons but swelled up to a couple of dozen. And two of them, viz. P.R. Guha and B. Guha whose signatures appear on the ballot papers are relations of Guha. And now let Roy speak out once more not in his loud and self-convincing voice of examination-in-chief but with timid, choked and quivering voice in cross-examination.

92. What an interesting and convincing evidence given by the acting Chairman of the Election Board. He not even knew the name of the printer ? Not even asked his colleague as to when the ballot papers were sent to the printers for printing ? Not even knew how much money was paid to the printer and had no discussion with Bhattacharya at all ?

(And) with no uncertain terms he said that within five or six days from November 28 he saw the printed ballot papers and a mere calculation will show that he saw the printed ballot papers either on December 3 or on December 4 and he was quite sure of this fact.

(Now) his definite case that no ballot paper could be sent to the press for

printing before (the evening of) December 3, 1968, (and still) he saw the ballot papers on December 3 or 4, 1968, is an impossibility And realizing what he was saying was absolutely false he shifted the date to December 6 or 7, when the alleged writings started and let us see whether on December 7 the ballot papers were in his chamber.

93. Now the die is cast. December 4 was the earliest date on which the order for printing the ballot papers could be placed with the printers provided, however, the members of the Election Board were so vigilant as the postal authorities of the General Post Office. And pausing here for a moment it is necessary to remember that the Defendant No. 1 was not at all available due to his preoccupation. Roy is a busy practitioner; Nandy is an old man and the young one Bhattacharya had to remain in his office from 10 a.m. to 5 p.m. Matters to be printed had to be finalised and checked before sending them to the printers. A press had to be selected and the terms had to be finalised with the press. In this background was it possible to place the order with printers even on December 4 when the last date of withdrawal was 7 p.m. of December 3 ? Still it was said by Roy.

94. Having received all the relevant dates OH the previous day in course of (his cross)-examination and being reinforced overnight Roy fixed December 4 as the date of placing the order with the printer and December 8 as the date of delivery of the printed ballot papers. But he and his advisers should have*been more careful about fixing the date of delivery of the ballot papers by the printer on Sunday December 8 and not to speak, of the date of placing the order with the printer. No one could know when the ballot papers were going to be delivered by the press, but everything was kept ready and the moment the ballot papers were delivered writing" was started immediately. This witness affirmed his affidavit on December 10, 1968, and filed in Court in the interlocutory proceedings and in spite of the order of injunction deliberately suppressed from the Court that these things were going on in his chamber with the help of the supporters of Guha provided of course they were true. Can anyone ever dream that a member of the English Bar will suppress the facts from the Court ? Can it ever be expected from any Honourable and respectable man that he would be indulging with this type of nefarious activities in spite of an order of injunction from sending the ballot papers ? Yet it was said that there was nothing wrong in it as there was no legal bar in writing the ballot papers. And of course there was no legal bar from committing fraud and betraying the confidence not to speak of from being dishonest. It is suffice for me to say at this stage that honesty and morality are foreign to all these unscrupulous people. Leaving aside the legality, honesty and morality for the time being, and coming back to the hard facts how his previous testimony regarding the writing of the ballot papers from 3rd or 4th and even from December 7, 1968, can be reconciled with the new case invented overnight is beyond all imagination. And why there is so much self-destructive testimony ? Did anything really happen in his chamber prior to the night of December 12, 1968 ?

95. Minute book is silent on the venue of the future operation and still Bhattacharya all on a sudden with a host of people invaded the chamber of Roy on the evening of December 8 and delivered him the ballot papers and immediately the operation-writing was launched came back to his memory overnight, but his memory again received a set-back when he said "about 5,000" ballot papers were printed "but I do not remember that. Arun Bhattacharya will be able to say that". Now the efficient collector of the ballot papers should speak out; There must be this exact precision as Bhattacharya entered the witness-box on Monday May 26 which was left vacant by Roy in the previous week-end. But let us see with what fate this precision met in cross-examination. Memory is scattered and the precision is shattered and no one knew how many ballot papers were even printed, and still Bhattacharya said that it was he who took delivery of the ballot papers from the press and so let him lead us to the press.

96. Roy must be corroborated and the date of placing the order for printing must be December 4, otherwise how could the printer deliver them on December 8 and the date of delivery must be December 8, otherwise how could 4,840 ballot papers be written, checked, compared, initialed, counted, affixed with postal stamps and rubber stamped with the words "under certificate of posting" and of course the posting had to be made on December 14. The Director Sengupta must open the closed doors of the press at 4 p.m. on Sunday to oblige Bhattacharya, after all Bhattacharya is a gentleman and had come all the way from Santragachi. How could the Director Sengupta ask for the immediate payment from Bhattacharya who was known to him for a long time and how could he put Bhattacharya in trouble as a part of the money had gone to the pocket of the typist of Lalbazar ? The friend in need of Sabbath Day needs no more to be disturbed and indeed he must have a day of sacred rest. The letter written to the printer must not be produced at all. The receipt or the challan, not signed on December 8, must be effaced from the memory and finally must not be given at all to this find. The records must not be seen and the bill (of the Press dated December 11, 1968) should never see the light of the day. The rough account book cannot be touched as it is spoiled by the unclean hands of the mysterious typist of Lalbazar and the final accounts cannot be prepared at all as the suit is pending.

97. (At this stage I go back to the chamber of Roy. He) at first said that rubber stamping with the words "certificate of posting" was also done on (inland papers) in his chamber and then he made a somersault and said that he did not remember whether it was done or not. It is preposterous to suggest that he did not remember when according to him everything was done in his presence for so many days and in his own chamber. His convenient lapse of memory and quivering voice clearly revealed that he was deliberately suppressing the truth from the Court for the obvious reason that the interlocutory application was still pending and one of the points" involved therein, was whether the ballot papers should be sent under registered post or under certificate of posting. As a practicing lawyer he did not want to commit himself to these capricious and mala

fide acts and went further and even said that he did not remember whether the words "under certificate of posting" in rubber stamps were impressed on the inland papers at the time of posting (though according to him those inland papers were with him and in his car while he was waiting) in front of the Post Office on December 14. Not only so, he started retracting from his own (previous) statements (that) everything was done in his presence and in his chamber. In his examination-in-chief his categorical statement was that everything was done in his presence and now in cross-examination he must forget about rubber stamping because he was the acting Chairman of the Election Board and a member of the Bar.

98. Bhattacharya in a number of questions (had) said that during the period of injunction rubber stamping (was done on the inland papers) in the chamber of Roy. If Roy had scrutinised and checked the envelopes and everything done in his presence then this evidence of Bhattacharya must be untrue as most of the inland papers produced in Court bears the impression of the rubber stamp with the words "under certificate of posting" and these documentary evidence conclusively show that Roy has no regard for the truth. It further raises a serious doubt as to whether anything was done in the presence of Roy for all these days.

99. Bhattacharya (had) said that he had purchased postal stamps of 20 P. each for a total sum of Rs. 1,000 and the postal stamps of the value of 70 P. was required for sending three ballot papers under certificate of posting and more than Rs. 1,120 was required for posting 4,840 ballot papers. Purchase of each stamp of 20 P. is palpably false inasmuch as in Ex. G/2 each and every stamp affixed is of 10 P. and not of 20 P. His evidence conclusively shows that the requisite number of stamps were not even purchased for sending all the ballot papers. He had suppressed his rough account book which would have brought out the truth. I hold that he had nothing to do with the purchase of postal stamps and Rs. 1,000 was not even spent for purchasing the stamps.

100. Apart from the numerical strength and the number of days taken in that operation, Roy said that all the names and addresses on the inland papers were written from the voters list and the writings were compared with Ex. G2. He later on made an improvement and said instead of the cyclostyled copy the original voters list was used in his chamber which I have already rejected as false. His definite case was that two lists were only used in his chamber. He firstly said that six persons were working in two batches and one person was dictating from the list, another person was writing the ballot papers and the third one was comparing with another list, and if that was true then there must have been four lists instead of two lists. Later on, he completely changed his case.

* * * *

According to this change there were three groups of people and one person was dictating from the voters list and another was writing the ballot papers and checking was done afterwards. For these three batches of people, in that event,

there must be at least three voters list for writing the ballot assuming, however, that checking was done later on. But there is no evidence to show that three voters lists were in his chamber.

101. It is now necessary to go to the evidence of Bhattacharya. This evidence of Bhattacharya, if true, clearly shows that two lists were only used while some persons were writing out the names and addresses on the ballot papers from the voters list and he with another person was checking those writings with another copy of the voters list. Roy's oral testimony is now falsified by Bhattacharya, as according to Bhattacharya, while the writing was going on he was comparing those writings with another list and, hence, the question of checking afterwards cannot arise at all. Moreover, if only two voters lists were used in the entire operation there cannot be three groups of people. Roy did not corroborate the testimony of Bhattacharya as to the distribution of pages of original voters list amongst those writers and I have no hesitation in rejecting this story of Bhattacharya. Similarly, appreciating that for the purpose of writing 4,800 ballot papers several groups of people were required, Roy at the last stage of his evidence came out with the false case that three groups of people were working at the same time. Bhattacharya came after Roy and started increasing the number of people as stated above and. so there were many other groups of people or batches of people and all of them must have at least one list from which the names and addresses of the voters list could be written. With the increase in number of batches there must be increase in number of voters list, and there being only two voters list, I am unable to accept the evidence of these two witnesses as to what had happened in the chamber of Roy. None of these writers were called to give evidence and these contradictory evidence of Roy and Bhattacharya are nothing but deliberate falsehood.

102. Roy and Bhattacharya had admitted that the addresses of many ballot papers were incorrectly written and that the postal stamps were not affixed at least in some of the ballot papers produced in Court. All that I need to say here is that these commissions and omissions clearly show that there was no proper checking as to the writings of the ballot papers and also as to the affixation of postal stamps on the ballot papers. I will now come to the evidence of Roy as to what part he played in this alleged operation. According to Roy, he was directing the manner in which the works were being done and he was sometimes scrutinising the writings, but most of the time he was verifying the writings on the ballot papers and everything else was done by Bhattacharya. His evidence is that excepting the rubber stamp impressions on the ballot papers he checked the writings on the envelopes and also the postal stamps and certificate of posting forms, but when his attention was drawn to only a few mistakes as to the writings on the ballot papers he started saying that there were some omissions and "slips". And lastly his entire case crumbled down and he did nothing in this matter. The total recall of events in examination-in-chief totally belied him and in force of cross-examination his chamber was divided and he had to erect an adjoining room while in the witness-box and fled away from the scene by leaving

everything to Bhattacharya and of course "without knowing what Bhattacharya actually did" (in the other room).

103. Now I will come to the most serious conflicting evidence of Bhattacharya and Roy. Roy said that he used to distribute the ballot papers to the respective groups and on the night of December 13 at about 9 the writings.; ?were completed and he kept them in his Almirah. Bhattacharya, on the other hand, said that (Bhattacharya) used to bring (them) out from the almirah and used to distribute them to the writers. He kept those ballot papers in the almirah. According to Bhattacharya, on the 13th night counting of ballot papers was started at 9 o'clock and continued upto 12-30. Roy's definite case was that at about 9 o'clock in the night of 13th after the ballot papers were (written) he kept them in the almirah and if that fact was true then there could not have been any counting of the ballot papers after 9 p.m.

* * * *

According to Roy, the Defendant No. 1 never came to his chamber, but Bhattacharya said that the Defendant No. 1 was present on the night of December 13 and counted the ballot papers. Roy said that Nandy never visited his chamber excepting on November 25 and 28, but Bhattacharya said that apart from those two dates Nandy came on two other nights and signed some ballot papers. None of these two creators of falsehood can be believed and I totally reject their evidence. Although the Defendant No. 1 did not come to the witness-box still I am unable to believe that he would sign the ballot papers before the injunction, was vacated as he was fully aware of the observations made by. the interlocutory Court.

104. No explanation was offered as to why these documents, viz. (the receipt or challan and the bill of Chanakya Press dated December 11) were not produced. The director of the press Hiralal Sen Gupta, the writers of the ballot papers and the persons who have signed the ballot papers were not called to give evidence. Added with these, the most glaring self-destructive and contradictory evidence of Roy and Bhattacharya raise a serious doubt as to whether anything had happened prior to December 12, 1968. Interpolation (made) in the alleged minute book of the Election Board and also non-production of the rough account book of Bhattacharya and his alleged loss of diary and the story (relating to) the typist of Lalbazar clearly show that these two witnesses have no regard for the truth. These deliberate suppression of important documents and the withholding of material witnesses and avoidance of witness-box by Nandy lead me to draw an adverse presumption to the effect that the ballot papers were not delivered before December 11 and nothing took place in the chamber of Roy before the injunction was vacated. In any event, as I have totally rejected the evidence of Roy and Bhattacharya, nothing remains on record to show whether anything had really happened prior to December 12, 1968., in the chamber of Roy.

105. Under the previous rules of the Club the election was to be held and

completed by the month of December. Those rules were changed. The present rules provide that the result of the election should be declared in the Annual General Meeting of the Club which should be held in the month of January after giving 15 days' notice and the actual election can be held on any day prior to the holding of the Annual General Meeting. Ballot papers must be posted within one month from the date of scrutiny of nomination forms and if posting is not possible for unavoidable circumstances the Executive Committee is empowered to extend the period of such posting. Now, let us see what Roy had firstly said on these rules regarding the fixation of the date of election and what were the difficulties for extending that date. At first, Roy said that under the relevant rule election must be held "within the year" i.e. December 31, 1968, and then could not find out any such provision and fled away by saying, "what is written here is here". He is a lawyer and the Court at least expected from him that he should be frank and should not make such an irresponsible statement from the box. Previously he said that election must be held within December 31 and now he said that the election must be completed within 30 days from the scrutiny of the nomination papers. The rule on which he relied falsified him and immediately appreciating the same he came out with the third reason which I have already rejected as false.

106. Notice of motion dated December 13, 1968, for interim order before the Appeal Court was served on the Attorneys for the contesting Defendants at 3-40p.m.; on the same day Roy and Bhattacharya could have easily waited till December 16 on which date the said application was to appear before the Appeal Court for directions as there was no difficulty in changing the date of election by means of a rubber stamp, as suggested to Bhattacharya, and then the ballot papers could be posted by them Bhattacharya (then) had admitted that the Election Board did not take any formal decision to despatch the ballot papers after the meeting of November 28, and the Defendant No. 1 and Nandy were not consulted before the alleged posting. From this evidence of Bhattacharya it is quite clear that the Election Board as a body did not take any decision on posting after the injunction was dissolved and I repeatedly asked him about the date on which the decision to despatch ballot papers was taken and after deliberately avoiding to answer repeatedly he ultimately said that this decision was taken on December 13 "after the work was completed at night, say at about 9 o'clock or so". At that time Nandy and Ranadeb Chowdhuri were not there according to this evidence of this witness (but later on he) said that Ranadeb Chowdhuri was present on the 13th night and counted the ballot papers which continued upto 12-30 a.m. I shall be failing in my duty if I do not record here the impression that I have formed about this witness--He is no less a cold-blooded perjurer than Roy.

107. This witness first of all said that he did not remember whether any liberty was given by the Appeal Court to the Plaintiffs to renew the prayer for injunction, but when the relevant papers were shown to him he admitted that on the 13th night he knew about it and still he did not consult the Defendant No. 1 although

(he is) "a person of some great stature in the legal world". Roy and Bhattacharya not only played foul with the Defendant No. 1. but also they wantonly, capriciously and mala fide took that decision on the night of December 13, and in view of the pendency of that application before the Appeal Court they suppressed that mala fide decision from the Defendant No. 1.

108. The suit was filed on December 6 and the injunction was issued by the Interlocutory Court on the same day. One of the prayers in that application was that the election should be held under the supervision of the Court. In the affidavit-in-opposition of Roy there was no whisper about the date of election nor about the printing of ballot papers and I have no doubt in my mind that after the said notice of motion was served on them Bhattacharya placed the order for printing the ballot papers and caused the date of election to be imprinted mala fide with the concurrence of Roy.

109. The first reason given by Roy as to why no one was taken at the request of Dr. Das or 200 members was that everything should be done "secretly in a private place" and "for safety", secrecy is maintained for fair and impartial election. And, of course, such a secrecy and impartiality was maintained by taking the associates of Guha. Nay, everything must be done secretly, otherwise there would be no fair election and for that purpose no one should be taken at the request of Dr. Das and 200 members who were asking for sending of the ballot papers by registered post. (His) second reason. was that he thought that "they have confidence in the Election Board", and what a confidence these 200 members had is clear from the fact that the very honesty and integrity of Roy are the subject-matter of this litigation. The last reason was that nobody had any appreciation of what was happening in his secret chamber and "as a matter of fact nobody did question" his integrity. And what a reason it was The suit and the application were pending against Roy charging him with fraud and dishonesty and still he said that nobody had any apprehension and nobody did question his honesty and integrity and these statements he made while he was being cross-examined on his very honesty, integrity and fraudulent acts.

110. In the affidavit affirmed on December 10, 1968, Roy, inter alia, denied "that there could be any question of any apprehension of any unfair election of the said Club". He further said "that all the members of the Election Board are respectable, independent and responsible persons" and "are faithfully and efficiently and honestly discharging their duties for the benefit and advancement of the objects and purposes of the said Club". It was further repeated by him, "I say that all the members of the Election Board are independent, respectable and responsible persons of integrity and honesty".

111. Roy and the Defendant No. 1 are well-known members of the Bar. By his affidavit Roy told the Court that all the members were doing their duties, that is to say, the Defendant No. 1 was discharging his duties as the Chairman of the Election Board and was also taking personal care and interest in the matter of election. The Court relied on this affidavit specially when a member of the Bar

has affirmed it and, relying on what he had said as? true, vacated the interim injunction on December 12, 1968, with the observation (mentioned) before.

112. In this affidavit, Roy deliberately perjured himself by saying that the Defendant No. 1 was discharging his duties. He further suppressed as to what were happening in his chamber and this deliberate suppression of facts clearly show that those facts were utterly false and nothing did happen in his chamber prior to December 12. Leaving aside this falsehood for the time being let us now see how the desire of the Court expressed while vacating the injunction was meticulously observed by these "respectable, independent, and responsible persons of integrity and honesty".

113. On December 13 Notice of Motion was served in which it was stated that the prayer for injunction would be renewed on December 16. Between December: 12 and December 16 there was no injunction restraining the despatch of ballot papers. The first round of legal battle was won on December 12 on the basis of this perjured affidavit, but again another obstacle was forthcoming and naturally before December 16 everything must be done by these honest people. But was it at ^11 possible as the 15th was a Sunday? This difficulty must be surmounted, and so Bhattacharya must stay at the residence of Roy on the 13th night and everything must be done secretly.

114. The green light came on the 12th and 4,800 ballot papers had to be initialed, written, compared, checked, sealed and stamped and, above all, "preparation must be completed" for posting? under certificates and, of course, there was enough time for completing everything in view of the observation of the Court. It is true that the Defendant No. 1 did not come to the witness-box and did not enlighten the Court on which day he had put his initials on some of those ballot papers, but it is unthinkable that he would put his initials so long the injunction continued and so he must have signed the ballot papers after the injunction was vacated either on the evening of 12th or in the morning of December 13.

115. Now the amber light is on at 3-40 p.m. of December 13 and so everything must be arranged before the red light stops their fraudulent acts on December 16. It is impossible to write 4,800 ballot papers even assuming that the writing started from the evening of December 12. And so it became absolutely necessary that everything must be done secretly in the chamber of Roy and for their secret works Bhattacharya must stay the whole night on December 13 at the residence of Roy.

116. The application for injunction was pending before the Appeal Court. The observations of the Court made on December 12 were known to them, and still everything had to be done secretly so that no one in the world including the Defendant No. 1 could say what had happened in the closed chamber of Roy. Honesty and integrity of the members of the Election Board were challenged by the Plaintiffs and serious aspersions including charges of fraud was made, and

still Roy said that nobody ever challenged their honesty and integrity. This is a fantastic lie and this falsehood can only be created by the most irresponsible and unscrupulous man, and I venture to say that no responsible man could have ever said so. As I posed before did anything really happen in his chamber prior to the 12th and now I say nothing did happen in his chamber prior to the 12th, otherwise there could not have been so much lies and contradictions from the beginning to the end and the Court room would not have been shaken with the cyclone of falsehood I do not wish to waste any further time on this aspect of the case.

117. Leaving this dirty chamber of Roy it is necessary to say. I will now deal with the dirtiest incident that one can ever think of. On the alleged posting of ballot papers Bhattacharya told the Appeal Court that he made over Ex. G2 and all ballot papers to the counter clerks in the Post Offices. The counter clerks in these three Post Offices did not compare fill addresses written on the ballot papers with the addresses typed in Ex. G2, and after counting the total number of ballot papers they obliterated the stamps affixed in Ex. G2 with postal seals and all these things were done by them in his presence at the counters (of all these Post Offices).

118. Ramendra Nath Roy, the Postmaster of Shyambazar Post Office, was called by the contesting Defendants and he encircled the printed portions of one of the certificates of posting included in Ex. G1 and told me that those encircled portions should be typed out or written in plain sheets of papers for using them as certificates of posting if sufficient number of printed certificate of posting forms are not available. He further told me that the nature of the articles and the exact addresses written on the articles should also be written in the typed or manuscript certificates (and) he saw the despatch clerk was checking a "huge number" of odd sized inland letters and that despatch clerk-was the only despatch clerk who was doing that job Now I set out below Q. 36 in chief of this Postmaster:

Q. 36. When you said "go on checking"--did they check ?

Yes, they were checking the articles with the form the number, name and the address (*Italics are mine*).

119. (Now that) the word "they" was deliberately inserted in the question, this intelligent witness immediately appreciated what sort (of evidence was expected from him and he gave it. I pause to say) here that the adviser of the contesting Defendants should have been more careful before putting this witness into the witness-box as Bhattacharya told the Appeal Court that the addresses written on the ballot papers were not compared with the addresses given in Ex. G2 whereas this witness said otherwise. Moreover Bhattacharya said that the entire job was done by the counter clerks whereas this Postmaster said otherwise. On a large number of pages of Ex. G2 postal seals containing the words "S.M.R. Calcutta" (were) used for obliterating the stamps, (and) this witness after going

through them admitted that it was a defectively manufactured postal seal and instead of "S.M.R. Calcutta" it should (be) "R.M.S. Calcutta" (and) S.M.R. City-1" is the Calcutta G.P.O.

120. At this stage it is necessary to recall that one Debaprasad Chatterjee, an investigating inspector of the Calcutta G.P.O., was called by the contesting Defendants in the Appeal Court to say about the procedure generally adopted if the required number of certificates of posting forms are not available. Debaprasad told the Appeal Court that Ex. G2 would not be the certificates of posting if the addresses written on the articles were not compared with the addresses given in this exhibit by the postal clerk. Evidence of Debaprasad went against the contesting Defendants read with the evidence of Bhattacharya in the Appeal Court. This Postmaster at first corroborated what Debaprasad had said in the Appeal Court and then retracted (from it). He was quite right in saying that no certificates would at all be issued if the addresses were not compared, but his eagerness to validate the certificates even without comparing the addresses clearly shows that he was called to undo the effect of the evidence recorded in the Appeal Court.

121. As Bhattacharya said in the Appeal Court that the ballot papers were only counted by the postal authorities and no checking was done, this witness was procured to prove that there were actual checking in his Post Office. With no uncertain terms Bhattacharya repeatedly told the Appeal Court that writings on the ballot papers were not checked with Ex. G/2 and this man said otherwise. This witness went further and placed a "sorting case" to obstruct the vision of Bhattacharya, but Bhattacharya did not tell the Appeal Court that the counter clerk went inside the Post Office with all those papers nor he said that his vision was obstructed in any way. This (Postmaster) did not stop here and made his counter clerk blind with the "sorting case", and he will not support his own men for dereliction of their duties and they should be departmentally punished, but so far as the contesting Defendants were concerned Ex. G/2 must be a valid certificate of posting. This witness is the Postmaster and still in zeal and in utter violation of the departmental rules by which he was bound said that Ex. GJ2, was a valid document to support the mala fide and fraudulent acts (of Ray and Bhattacharya) although the most essential things were not written in it as shown by him by encircling the printed portion of Ex. G/I. Rules quoted by the Postmaster from the Manual in Qs. 17-19 were not even followed. Evidence of Debaprasad Chatterjee and Bhattacharya in the Appeal Court totally destroyed the validity of certificates and to nullify its effect this untruthful Postmaster was procured to say that a large number of ballot papers were made over to his Post Office and some of them were compared and checked with Ex. G/2, and everything was done in his presence for a few seconds which I totally reject as false and fabricated.

122. Many ballot papers out of 60 produced in Court do not contain any stamp and some of them were incorrectly addressed. The addresses written on some of

them were not the addresses shown in Ex. G/2. In a number of them names of the non-existent streets were even written including the non-existent premises numbers and none of them could be found in Ex. G/2. If the postal clerks of Shyambazar checked some of these ballot papers and compared them with Ex. G/2, then all those mistakes would have been detected by them Roy (had) said, "what had happened in the Post Office I cannot say", and still none of these postal clerks and the counter clerk of Shyambazar Post Office were called to give evidence although the evidence of the Post Master was seriously challenged in cross-examination and two vital issues in the suit relate to the actual posting of ballot papers and the validity of Ex. G/2. Roy admitted that he did not go inside these Post Offices and waited in his car, but he did not enlighten me- as to why he did so for more than 41 hours which is against the normal behavior of any man. Be that as it may, this fact clearly shows that he tried to dissociate himself not only as to what had happened in the Post Offices but also tried to disown his responsibility as to the use of postal seals on Ex. G/2.

123. Now, (as to) Bhattacharya, what a falsehood was created by him by telling the Appeal Court that same procedure was adopted in all the three Post Offices and the addresses written on the ballot papers were neither checked nor compared with the addresses given in Ex. G/2 and everything was done in his presence in all those Post Offices including Shyambazar Post Office by the counter clerks and what a greater falsehood was created before me by saying just the opposite thing. As he came after the Postmaster he must corroborate the evidence of the Postmaster by (falsifying) himself about what he had said before the Appeal Court According to the rules set out by the Postmaster the postal clerk must verify as to whether the stamps were affixed on the envelopes and must compare the addresses written on the articles with the addresses written on the certificate of posting. Attention of both Roy and Bhattacharya was drawn to a number of inland letters returned by the Post Offices as undelivered to the addressees and they admitted that some of them contained no stamps and others "were incorrectly addressed. These facts clearly indicate that nothing was done in any of these Post Offices and only a small number of ballot papers were posted and most of them were not at all posted No one was called from G.P.O. nor from Elgin Road Post Office to say as to what had happened there. The counter clerks, the despatch clerks and the assistants of all these Post Offices were not even called to prove that they (had) compared the addresses written on the inland letter with the addresses given in Ex. G/1 and Ex. G/2. No one was called from all these Post Offices to say that he (had) counted the inland letters. Moreover, required number of stamps were not even purchased.

124. Roy said that "the postal seals we cannot have" and the Postmaster of Shyambazar said that the postal seals of G.P.O. used in Ex. G/2 were defectively manufactured. Guha produced his own ballot paper which was posted from G.P.O. on December 14, 1968, bearing the postal mark "14 Dec. Calcutta R.M.S." whereas in Ex. G/2 the postal seals are "14.12.68 Calcutta S.M.R." How on the same day and in the same Post Office one defectively manufactured

postal seal and another correctly manufactured postal seal could be used, is beyond my imagination. Not only so, how could the defective seal escape the notice of so many postal authorities remained a mystery to this Court.

125. Some ballot papers were posted, otherwise 60 ballot papers could not have been returned by the postal authorities as undelivered to the addressees. Some of the witnesses called by the contesting Defendants have produced their ballot papers which were delivered to them by the postal authorities. On the other hand, the witnesses called by the Plaintiffs did not receive their ballot papers. Dr. Das also did not receive his ballot paper. The requisite number of stamps were not purchased for dispatching all the ballot papers. Names of non-existent streets and non-existent premises numbers written on the ballot papers clearly show (that) not only there was no checking nor comparing in the chamber of Roy but also something happened in all the Post Offices. The injunction was vacated on December 12- It is impossible to believe that anything actually happened in the chamber of Roy prior to that date and I have no hesitation in coming to the conclusion that nothing was done in the chamber of Roy prior to December 12, 1968. It is impossible to write 4,800 ballot papers in course of several hours. Roy and Bhattacharya have admitted that on the 13th night only a small number of ballot papers were written. The deliberate suppression of all relevant documentary evidence and deliberate withholding of most important witnesses conclusively show that nothing had happened in the chamber of Roy prior to December 12, 1968. If there is any case for drawing adverse presumption u/s 114 of the Evidence Act, this is the fittest one and drawing such an adverse presumption I hold that, all the ballot papers were not posted on December 14, 1968, but only a small number of them were posted from these three Post Offices. I am unable to accept the contention that Ex. G/2 is a certificate of posting of ballot papers. At the highest, it can be said that this exhibit was produced in those three Post Offices, but there is no proof that the corresponding number of ballot papers were also produced along with it in the Post Offices. This exhibit does not even certify that the ballot papers were actually posted nor does it acknowledge the receipt of any ballot papers. As a last resort, the Learned Counsel Mr. Das relied on the following observations of Chakrabarty C.J. in *Dhanapati Debi v. Corporation of Calcutta* 55 C.W.N. 749 (755):

In addition to these entry in the minutes, the Corporation also exhibited a register of letters sent by it to parties in cases heard and dealt with by the Building Committee. There appears on that register under the date June 25, 1949, an item number 37 and against that item there is an entry to the effect that letter was sent to the Petitioner at 10/2 Syed Sally Lane, under a certificate of posting. The necessary postage stamps covering all the stamps mentioned in the page are affixed in the register itself. The register was spoken to by P.W. 4, Dinesh Chandra Majumdar. In view of the materials present on record, it appears to me that under the provisions of Sections 16 & 114, illustration (f) of the Indian Evidence Act, as interpreted in decided cases too numerous to mention, there must be a presumption that the letter was duly received by the Petitioner.

126. This case does not touch the point involved before me as the posting of the letter was not an issue there, and "in view of the materials present on record" a presumption was drawn against the Petitioner about the receipt of the articles in question. But, before any presumption can be drawn in any case, it must be proved as a fact that the names and addresses were written on the article in question and that article was sent to the Post Office and the Post Office had given the certificate. In the absence of such proofs no presumption can be drawn as to the receipt of article by mere production of a certificate from the Post Office. Fraudulent procurement of certificates from the Post Offices in Calcutta is a growing cancer and had become so notorious that the Appeal Court took its judicial notice in *Ramashankar Prosad and Others Vs. Sindri Iron Foundry (P) Ltd. and Others*, where G. K. Mitter J. said:

In my opinion, the conclusion is irresistible that these notices had never been put in the post, although certificates of posting purport to have been obtained in respect thereof. It is only too well-known that certificates of posting can be got hold of without actually putting letters in the post and the Respondents must have adopted that course.

127. In the facts and circumstances of the case before me, if any presumption is to be drawn it must be drawn against the contesting Defendants. Moreover, in view of the rejection of the perjured evidence of Roy, Bhattacharya and the Postmaster there remains nothing on record to show that ballot papers were actually posted excepting a few of them. Guha, Roy and Bhattacharya acted hand in gloves and it was Guha who had procured two letters dated November 8, 1968, from the office of the Postmaster-General. He is well-known to high postal authorities and to many postal clerks of G.P.O. and he knows persons everywhere. He made Bhattacharya a member of the earlier Election Board and also the member of the present Election Board. He made Roy the President and Vice-President of the Club. Both Roy and Bhattacharya conducted the previous Election in the same manner as they (have done) in this Election. These facts coupled with the perjured evidence of these four witnesses, and the circumstantial evidence on record raise an irresistible conclusion that Roy, Guha and Bhattacharya procured the defacement of the postal stamp affixed in Ex. G/2 with the postal seals of these three Post Offices without posting most of the ballot papers which were not even written at all. I hold that the Ex. G/2 is not certificate of posting and most of the ballot papers were not even written nor posted.

128. The Plaintiff Bimal Kanti is an employee of a company of which Nishit Ghose is the Managing Director. Bimal Kanti was cross-examined at length to establish that it was Nishit Ghosh who had filed this suit in the name of the Plaintiffs to forestall the prosecution of suit No. 516 of 1966 filed against Nishit Ghosh. At the time of argument, the Learned Counsel appearing for the contesting Defendants did not press this point at all and did not even touch the evidence on record on this aspect of the case. At the time of giving reply to new cases, the Learned

Counsel Mr. B. Das told me that he did not give up this point and I should decide it on the materials before me. I record here that even in reply Mr. Das did not touch the evidence on record on this aspect of the case and, as this point was not pressed at all, the Learned Counsel Mr. Mitter appearing for the Plaintiffs did not make any submission on it.

129. At the relevant time, Roy was the President, Guha was the General Secretary and Nishit Ghosh was the Treasurer of the Club. According to Guha, there was a feud in the family of Nishit Ghosh and Nishit Ghosh requested Guha to expel Sudhir Ghosh, a stepbrother of Nishit Ghosh, from the Club. But how could Guha being an honest man and upholder of morals of the members of the Club and* the "stern discipline!-" agree to be a party to such a capricious act ? And naturally he must refuse to oblige Nishit Ghosh and Nishit Ghosh must be so furious that not only he would wrongfully misappropriate more than Rs. 1,58,000 belonging to the Club but also he would wrongfully and maliciously take away all the books of accounts to hide this heinous crime. This charge of misappropriation against Nishit Ghosh was copiously recorded in the type-written sheets of the minute book of the Club signed by Roy as the President and Guha as the General Secretary.

130. In the Annual General Meeting held on January 29, 1966, a resolution was unanimously passed directing the new Executive Committee to take appropriate steps for recovery of over Rs. 1,58,000 from Nishit Ghosh. Guha said that in the meeting of the Executive Committee it was decided that a suit should be filed against Nishit Ghosh. The plaint in Suit No. 516 of 1966 was shown to him and he admitted that Plaintiff Saha of that suit was known to him but he said that he did not know whether Saha belonged to his group or not though he admitted that Suit No. 516 of 1966 was filed pursuant to the decision of the Executive Committee. It is strange that Guha, the General Secretary of the Club, did not know whether the Executive Committee empowered or authorised Saha and his co-Plaintiff to institute that suit although he admitted that the Club authorities helped those two Plaintiffs to institute that suit and said, "we handed over the papers to them".

131. Suit No. 516 of 1966 was filed on March 4, 1966, under Order 1, Rule 8 of the Code. No steps, whatever, were taken and even the advertisements were not published as enjoined by the Code. Under Rule 35 of chap. 10 of the Original Side Rules of this Court the Suit No. 516 of 1966 is liable to be dismissed for non-prosecution and I fail to see why it has not yet been dismissed.

132. Paragraph 8 of the plaint in that suit sets out the particulars of misappropriation with dates to a fraction of a rupee and still it was alleged by Guha from the witness-box that the book of accounts were taken away by Nishit Ghosh. Not only so, Guha admitted that these particulars were supplied by the Treasurer of the Club from the books of accounts and those books of accounts were in the office of the Club when particulars were supplied by the Treasurer. In para. 9 of the plaint of that suit it is alleged that Nishit Ghosh had removed the

books of accounts from the Club. In the written statement of this suit before me the Defendants Nos. 2 to 4 have pleaded that this present suit has been filed mala fide and has been instituted at the instance of Nishit Ghosh against whom the said suit involving more than Rs. 1,58,000 is pending in this Court.

133. Nishit Ghosh is a businessman. He is the Managing Director of a company and it is a fantastic lie that Nishit Ghosh was so infuriated at the refusal to expel his step-brother, he would misappropriate Rs. 1,58,000 and would take away the books of accounts from the Club. The entire case against Nishit Ghosh crumbled down like a house of cards when Guha himself admitted that the books of accounts were with the Treasurer in the office from which particulars of misappropriation were supplied. The present Treasurer (has) avoided the witness-box and -he is the Solicitor on record of that suit. I expressly told the Learned Counsel Mr. Das that it would not be proper for me to decide anything about Suit No. 516 of 1966 as it was pending, but as Mr. Das still insisted I cannot refrain from saying that prima facie it seems to me that it was filed at the instance of Guha in league with Roy and the Treasurer falsely and mala fide and it was Guha who deliberately humiliated Nishit Ghosh in the Annual General Meeting in the presence of the general body of the members of the Club by causing the false resolution to be passed.

134. At the time of cross-examination it was suggested to Bimal Kanti that his co-Plaintiff Butto Krishna was also an employee of Nishit Ghosh and having received a denial the entire line of cross-examination was abruptly changed to show that Butto Krishna had a business connection with Nishit Ghosh which was also denied by Bimal Kanti. But Roy, Bhattacharya and Guha did not say that Butto Krishna was an employee of Nishit Ghosh nor did they say that Butto Krishna had any business connection with Nishit Ghosh, Moreover, Guha and Bhattacharya did not even suggest that Nishit Ghosh has filed this suit in the name of the Plaintiff. There is no iota of truth in it and I condemn this line of cross-examination.

135. In his written statement Roy said that Nishit Ghosh had filed this suit in the name of the Plaintiffs and the Plaintiffs were mere benamdars of Nishit Ghosh. He repeated the same charges in his affidavits and he had falsified his own written statement and the affidavit by expressly admitting that they were all hearsay. He vainly tried to justify his affidavit by saying, "what is there in the record is there" (and this) reckless statement can only be expected from an unscrupulous person and I have no hesitation in coming to the conclusion that Roy had deliberately made the false allegations in his affidavit and the written statement against Nishit Ghosh and this suit was not filed by Nishit Ghosh and the Plaintiffs are not the benamdars of Nishit Ghosh.

136. It is now necessary to set out Rule 38(h) of the Club below:

38(h). The Election Board or any one so authorised by the Board shall post under certificate of posting or any other method of posting deemed fit by the Board one such ballot paper to each voter within a month after final scrutiny of the

nomination papers. The time limit, however, may be extended by the Executive Committee under unavoidable circumstances.

137. In order to justify the mala fide rejection of the bona fide requests of Dr. Das and 200 members to send the ballot papers under registered post the above rule was deliberately misinterpreted by Roy. No member of the Bar with open eyes could put such a perverted interpretation on this rule and still it was made by Roy to justify deceitful rejection. But to uphold the dignity and integrity of the Bar it was thrown into dustbin by his own counsel. Only reason against the sending of ballot papers by registered post given in the written statement was that the cost of such postings would have been higher than the cost of posting under certificate of posting (and so let us go back before the suit was filed) Dr. Das's offer to pay the costs of sending the ballot papers by registered post was not accepted by Roy (for) the reason (that) "in that case tomorrow he will want to purchase the East Bengal Club". (Roy Q. 684).

138. Coming now to Guha he said that he had "very much" objection to sending of ballot papers by registered post and his reason was "we do not want to sell the Club to money bags". This answer of Guha clearly shows that it was he who never intended that the ballot papers should be sent by registered post and his wishes must prevail over the members of the Election Board. According to Guha, the sending of ballot papers by registered post will result in a sale of the Club to the "money bags" and, according to Roy, "in that case tomorrow" Dr. Das "will want to purchase the East Bengal Club". Both of them said the same thing but in different language and I will have to ascertain later on who had echoed whose voice.

139. Apart from the fact that both Roy and Guha (have) deliberately misinterpreted the rule, Guha went further and said that no fair election was possible if the ballot papers were sent under registered post. He held a firm conviction that the rule did not permit the sending of ballot papers by registered post and so was the firm conviction of Roy. According to Roy other method of posting would include the sending of ballot papers by messengers. This perverted interpretation of the word "posting" was not accepted by Guha when he said "any other method" would include the sending of ballot papers by ordinary post. Before leaving this topic I record here that all the counsel for the contesting Defendants did not venture to support this deliberate perverted interpretation of this rule and they did not even touch this evidence at all of these two witnesses.

* * * *

140. In 1964, Guha re-entered the Club and formed a formidable group with Dr. Das, Nishit Ghosh and a few other prominent members of the Club. Dr. Das said it was Guha who told him in that year that sending of ballot papers by certificate of posting was a fraudulent election and so Guha could never agree to the posting of ballot papers under certificate of posting for the election of that year. Dr. Das further said that Guha taught him that under the alleged certificate of

posting most of the ballot papers would not be posted at all and it was Guha who raised a slogan that there should be "no election" if the ballot papers were not sent "by registered post" to the voters. The then Executive Committee did not take any step for the preparation of the election and so no election could be held in 1964. A suit was filed in this Court and by consent of all the parties the Court appointed the Defendant No. 1 as the Special Officer to hold the election under the supervision of the Court and directed the Defendant No. 1 to send the ballot papers under registered post and the said election was held in April/May 1965 as stated above.

141. This group contested that election and Dr. Das secured the highest number of votes and was elected in the Executive Committee. The other leaders of this group Nishit Ghosh was also elected as a Treasurer of the Club, but within a few months Guha "alienated" him.

142. There was a temporary set back for Roy as he lost the election though supported by Guha. But Guha was elected as the General Secretary of the Club with an absolute majority in the Executive Committee which was aptly described by Bhattacharya as "J. C. Guha came into power again". Bhattacharya was introduced to Guha and Guha made him a member of the Club in May 1965. This Executive Committee had a short span of life and the next election was to take place in December 1965. Under the rules. of the Club this Executive Committee was to appoint the Election Board and the person who would be elected as the President of the Club by the Executive Committee would not only be automatically included in the Election Board but would also act as its Chairman. And naturally the selection of the President was of vital importance to that Executive Committee. Brushing aside the controversial topic as to whether Dr. Das took a particular stand or not. at the time of Presidential election of that year as it is of no moment, I will revert to Roy once more and see how his temporary set back was retrieved.

143. He was sponsored by no less a person than Guha himself and still rejected by the general body of the members. And so he must be made the President of the Club over the general body of the members. It was Guha who proposed his name in the first meeting of that Executive Committee in which 15 out of 23 members were present and Roy was unanimously elevated to the highest post of the Club and still Roy did not blush in saying that he did not belong to the group of Guha Nay, with the impact of suggestion that Guha was so powerful that even he could make a defeated candidate the President of the Club all gratitude?s to Guha was momentarily shattered and the reply came, "No, he could not do whatever he liked". It was not an end but beginning of a new chapter (and) when three absentee members of the previous meeting challenged his appointment in the very next meeting and it was he who as the judge of his own cause overruled their objection and dinged to the chair.

144. As he said, "I am a member of the English Bar and I do not act according to the dictation of anybody" and "I act" according to reason", he was reminded

about these statements and was asked, "Do you consider it to be a reasonable thing that a defeated member should be placed at the head of the Executive Committee as the President?" and his answer was "I did not elect myself. I was elected President by the Executive Committee. You ask those members of the Executive Committee why did they elect me. There was no choice of mine".

145. Of course, he had "no choice" in this matter as he is always guided by "reason" and "reason" alone, and when Guha came to the witness-box, "reason" which came out from the blast-furnace of arrogance and impertinence was:

In public life it is immaterial whether a man is defeated or not. You know that Mr. P. C. Sen came from the back door when he was defeated in quite a many elections. So was Mr. Atulya Ghosh. What does it matter ?

146. There was no dearth of eminent persons in the Club and still why Roy was made the President by adopting this dirty "back door" policy is clear from the subsequent events not to speak of that Guha did not deny the suggestion that Roy was his "yesman" After Guha's reentry in the Club Bhattacharya (was) made a member of the Football Sub-committee which is one of the (most) important sub-committees of the Club and is always formed with the eminent football players of the past He was absolutely a new member and has never played football in his life but still he was made a member of such an important sub-committee. as he was a supporter of Guha.

147. The most important event (which) took place in 1965 was the introduction of triennial election in place of annual election by amending the rule of the Club while Roy was the President and Guha admitted that this change was made so that once he becomes the General Secretary he would continue for three years. After all, these interesting events took place before election was held in December 1965. In that Election Board of 1965, Roy acted as the Chairman and Bhattacharya, absolutely a new member and having no previous experience in conducting an election of the Club, was not only included as a member of that Board but it was he who also acted as the Convener of that Board. In that election ballot papers were said to be sent under certificates of posting in the same manner as it was done this time and it was Roy and Bhattacharya who had supposed to have posted them, and what a remarkable result it was that Dr. Das, the then Vice-President of the Club, did not receive his ballot paper. All the witnesses called by the Plaintiff met with the same fate. Nay, most of the members were also the unfortunate victims of such a posting as recorded in the memorandum dated November 27, 1968, as told by the witnesses called by the Plaintiffs. There was practically no contest in that election as no scope was left for such a contest, and naturally Guha was again elected as the General Secretary of the Club for three years with an absolute majority in the Executive Committee.

148. The Defendant No. 1 became the President of the Club. Dr. Das did not contest the election of 1965 but he remained in the group of Guha. He was

brought by Guha in the Executive Committee by co-option in 1956-57 and it was Guha who again made him the Vice-President of the Club in 1966 through the Executive Committee. The expression used by Guha was "I made him the Vice-President". * For bringing such a grand success through the jugglery of certificates of posting Roy was rewarded with another post of Vice-President and Bhattacharya was again included in the Football Sub-committee and was sent to Dehra Dun and Shillong to bring football players.

149. According to Dr. Das, this Executive Committee was a mere "farce" and its members were absolutely dominated and controlled by Guha and the most of the members used to remain as silent spectators in the meetings of the Executive Committee. Dr. Das further said that for "the last two years due to gross misbehavior of Guha he was not attending the meetings and he was not at all satisfied in the manner in which Guha was conducting the affairs of the Club. His self-respect stood in his way and he could not tolerate the insults of Guha any further and he ceased to go to the Club.

150. It is not necessary to go into the details of this aspect of the case as in Q. 302 it was put to Guha, "you always dictated to the members of the Executive Committee what shall be what in the Club" and his reply was, "obviously, I cannot help" and still Roy said that Guha could not do what he liked. In Q. 573, Guha was asked-- "according to you, apart from you there is no one else in the East Bengal Club capable of handling?" and his answer was--"not a single man, not according to me but according to the members". The last part of the answer is not a modesty on his part but it was a vain attempt to put (it into the) mouth of the members and in Q. 545 he, inter alia, said, "I am the head of the institution" and in Q. 1162 he said, "I do not require anything, power comes automatically to me", and in Q. 792 he was asked, "do you almost invariably alienate every body?" and his curt reply was--"if they differ they will be alienated".

151. Dr. Das further described Roy, Bhattacharya and Nandy as the "yesmen of Guha" and said that in early part of October 1968 he went to Roy and requested him to see that the ballot papers were sent by registered post, but Roy told him that Roy should not think of any other line than that of the General Secretary and he also declared that East Bengal Club is J. C. Guha and J. C. Guha is the East Bengal Club, so far as East Bengal Club is concerned, he is the friend, philosopher and guide. When Dr. Das was in the witness-box Roy was personally present in the Court and in his presence it was put to Dr. Das, my instruction is that so far as Aran Roy is concerned you did not approach him nor did he tell you that he cannot think of any other line excepting that of J. C. Guha? and Dr. Das replied "that will be fantastic lie".

152. In-chief Roy was asked--

It has been suggested by Dr. Das who has given evidence that he approached you with the suggestion that the ballot papers must be sent by registered post

and his reply was--

It was not a fact; he did not approach me ; even if he would have approached I would not have allowed it just to violate the Club rule.

Denial which was made through the counsel was repeated by Roy in-chief and let us see how he faced the cross-examination.

153. The fateful meeting is admitted and so is the request of Dr. Das. It is further admitted that such a request was not complied with. The case put to Dr. Das in cross-examination is falsified and the denial of Roy in-chief is a deliberate lie and still undaunted he "charged Dr. Das with malicious falsity. He was swept away by the flood of registered ballot papers in April/May, 1965, and must turn down such an obnoxious request of Dr. Das. The relevant rule of the Club for posting the ballot papers must block his way and it must be misinterpreted and His Master's Voice must be echoed to save the ballot papers from the greedy and unscrupulous "money bags". The doors of his dirty chamber must be closed on the face of Dr. Das to carry on secretly (with) the dirty affairs of midnight and drums must be beaten to proclaim the great contribution of Guha and still Roy will never say to Dr. Das "East Bengal Club is J." C Guha and J. C. Guha is East Bengal Club" and will not utter "Guha is the friend, philosopher and guide".

154. Guha did not deny the suggestion that "he is the East Bengal Club and East Bengal Club is J. C. Guha" and according to Guha, this institution is the part and parcel of his life and he loves this institution and is wedded to it Roy said that he did not belong to the group of Guha and Bhattacharya volunteered and said that he had no group but Guha said otherwise. The truth has a peculiar way of proclaiming itself and in the unguarded moment of Guha it took the opportunity and escaped, from his lips and proclaimed that not only Roy and Bhattacharya belonged to his group, but both of them were also confirmed liars, but the truth did not stop here and once more came out in the broad day-light when by the very sight of a ballot paper (out of 60 produced in Court by Roy) Guha was swept away by a superiority complex and faced the cross-examination in a challenging mood.

155. He is wedded to the Club and the children of this wedlock wanted to make him the "Life Secretary" and so he must have "plenty" of ballot papers and had them. Again the peons came to his rescue, but peons did not want to make him the "Life Secretary," but still he had plenty of ballot papers. Falsity deliberately created by Roy and Bhattacharya knew no bounds and it is they who wanted to make Guha the "Life Secretary" of the Club. They tried to hold a fraudulent election and without posting a large number of ballot papers simply handed them over to Guha. To carry out their evil purpose, they did not take any representative of Dr. Das and 200 members and they secretly pasted the postal stamps in Ex. G/2 in the chamber of Roy and thereafter in connivance with some postal clerks got them defaced with postal seals without posting "plenty" of ballot papers and (due to) hurry the defectively manufactured postal seals of

G.P.O. escaped their attention.

156. In *Sailendra Nath v. Bijan Lal* 49 C.W.N. 133 (142) Mukherjee J. (as he then was) held:

Fraud and collusion often lie deeper than what appears on the surface of things. It is perfectly true that charges of fraud and collusion must be properly proved by established facts or inferences drawn from them and suspicions and surmises are not permissible substitutes for those facts or inference. But that, as " their Lordships of the Judicial Committee pointed out in *Satish Chandra Chatterji v. Satish Kantha* 28 C.W.N. 327 does not require that every artifice or contrivance resorted to by one accused of fraud must be completely unraveled and cleared up and made plain before a verdict can be given against him. What is necessary in such cases is to take the facts admitted and proved as a whole and to draw the legitimate inference therefrom, and Lord Atkinson in *Satish Chandra's* case 28 C.W.N. 327 said:

If these were not so, many a clever dexterous knave would escape.

157. It is an elementary principle that persons who are in charge of conducting the election must be impartial and honest. They must be fair to every candidate and to every voter. Their fundamental obligation is to conduct and hold the election fairly and honestly. Their fundamental duty is to refrain from doing anything which may in any way imperil a fair election. In the matter of appointment of personnel's to conduct the election most important consideration for the appointing authority is to select such persons who must, be impartial, honest, fair and efficient, otherwise the very object of holding the election would be frustrated.

158. Under Rule 38(e) of the Club, the Executive Committee is to appoint three eminent members none of whom shall be candidate, nor a propose or a secondary of the candidate, and those three persons along with the President of the Club shall constitute the Selection Board and the President will be the Chairman of that Board, failing him, the Board may appoint its own Chairman and one of the members of the Board shall act as a Convener. This power of the Executive Committee to appoint three members to constitute the Election Board is not irresponsible nor autocratic but is coupled with the duty not only enjoined by the rules of the Club but also are subject to the fundamental obligations stated above.

159. It was quite apparent to all the members of the Executive Committee that the Defendant No. 1 would not be available at all to conduct the election of the Club in view of the State Assembly Election and so it was absolutely necessary for them to constitute the Election Board with men of high integrity and honesty. Guha admitted that in the meeting in which the Election Board was appointed, the Defendant No. 1 was present for a couple of minutes only and Dr. Das was, absent. After the Defendant No. 1 left the meeting, Roy took the Chair and it was Guha who proposed the names of Roy, Bhattacharya and Nandy to constitute the

Election Board, and as the Executive Committee was wholly dominated by Guha there was no opposition and these three most dishonest people were unanimously appointed. These members of the Executive Committee had violated their fundamental obligations. They have abused their power and confidence that were reposed on them by the general body of the members of the Club.

160. Paresh Nandy who is a friend of Guha since 1929 did not come to the witness-box. He went to Bombay in 1959 as the Personal Assistant of the then Managing Director of Life Insurance Corporation. In the early part of 1968 he retired from his service and returned to Calcutta. He did not pay his subscription and was a defaulter member. Roy said that Guha did not inform the members of the Executive Committee in which the Election Board was constituted that Nandy was a defaulter which was admitted by Guha Nandy was absent for so many years from the Club and did not take any interest in the affairs of the Club. He did not pay his subscription and was not even a voter and still he was made a member of the Election Board and it was Guha who proposed his name. This man, Guha, is so dishonest and corrupt that he even played foul with his own men by suppressing the fact that Nandy did not even pay his subscription.

161. Guha admitted that members forming a particular group, if in a majority in the Executive Committee, can always constitute the Election Board with their own men and the Election Board can always send the ballot papers in the way their group wanted to do. He himself admitted that it was for the Election Board to decide whether they should "rig" the election or not and the power comes to Guha automatically and he will always remain in the East Bengal Club and I add, of course, with powers of a "Life Secretary".

162. Most of the members of the Executive Committee belonged to the group of Guha and no one could alienate him. These members of the Executive Committee belonging to the group of Guha to make him the "Life Secretary". Moreover, the Accountant and the Treasurer of the Club were the members of the Executive Committee and at least they must have known that Nandy did not pay the subscription. This is also on record that the voters list was prepared under the supervision of the Treasurer and the Treasurer had signed each and every page of the original voters list. Nandy did not even pay his subscription and still the Treasurer and the Accountant did not raise their voice in the meeting as Nandy was a friend of Guha and would act at his dictation. Roy and Bhattacharya conducted the previous election most unfairly and still Roy was made the President by Guha and thereafter as one of the Vice-Presidents by the outgoing members of the Executive Committee. Bhattacharya was made a member of the Football Sub-committee and was also made a member of the Election Board along with Roy and Nandy. These facts clearly show that most of the members of the outgoing Executive Committee were under the complete influence and control of Guha and it was Guha who dominated them. Guha further admitted that if a particular group was in a majority in the Executive Committee they could

always constitute the Election Board with their own men, and in this case, I hold these members of the Executive Committee did so at the instance of Guha to "rig" the election.

163. Direct and circumstantial evidence coupled with the admission of Guha and the perjured evidence of Roy, Bhattacharya and Guha and deliberate avoidance of the witness-box by Nandy conclusively show that Roy, Bhattacharya and Nandy were the henchmen of Guha and they were merely the stooges in the hands of Guha. They are absolutely dominated and controlled by Guha. They were not fit to be appointed as members in the Election Board and they were appointed with open eyes to hold a fraudulent election for the benefit of Guha and some of the members of the Executive Committee who are contesting in the present election. Members of the Executive Committee have broken their fundamental obligations and have betrayed the confidence and trust reposed on them by the general body of the members of the Club. The Defendants Nos. 2 to 4 are not independent persons and they have wantonly violated their fundamental obligations to hold the election fairly and impartially. They are neither honest nor impartial and have deliberately rigged the election by committing fraud on the general body of the members with a show of despatch of ballot papers at the instance of and for the benefit of Guha and some members of the outgoing Executive Committee. I am constrained to say here that had the Defendant No. 1 paid any heed at least to the observations of the Interlocutory Court while dissolving the interim injunction those villainous aftermath could have been easily been nipped in the bud.

164. It is an elementary principle that partial acceptance and partial rejection of evidence of a witness depend on the totality of the evidence on record judged in the light of facts and surrounding circumstances of each case for which no authority was required to be cited, and still strong reliance was placed as a camouflage on the following well-known observations of the Supreme Court in *Ishwari Prasad Mishra Vs. Mohammad Isa*, . Judicial experience shows that in adjudicating upon the rival claims brought before the Courts it is not always easy to decide where truth lies. Evidence is adduced by the respective parties in support of their conflicting contentions and the circumstances are similarly pressed into service. In such a case, it is, no doubt, the duty of the Judge to consider the evidence objectively and dispassionately, examine it in the light of probabilities and decide which way the truth lies. The impression formed by the Judge about the character of the evidence will ultimately determine the conclusion which he reaches. But it would be unsafe to overlook the fact that all judicial minds may not react in the same way to the said evidence and it is not unusual that evidence which appears to be respectable and trustworthy to one Judge may not appear to be respectable and trustworthy to another Judge. That explains why in some cases Courts of Appeal reverse conclusions on facts recorded by the trial Court on its appreciation of oral evidence. The knowledge that another view is possible on the evidence adduced in a case, acts as a sobering factor and leads to the use of temperate language in recording the

judicial conclusions. Judicial approach in such case should always be based on the consciousness that one may make a mistake that is why the use of unduly strong words in expressing conclusions or the adoption of unduly strong, intemperate, or extravagant criticism against the contrary view, which are often founded on a sense of infallibility, should always be avoided. In the present case, the High. Court has used intemperate language and has even gone to the length of suggesting a corrupt motive against the Judge who decided the suit in favour of the Appellant. In our opinion, the use of such intemperate language may in some cases tend to show either a lack of experience in judicial matters or an absence of judicial poise and balance.

165. There is no whisper of the proposition for which the above observations made by the Supreme Court were so strongly relied on but with little brains anyone can understand why they were still so cited, and I am grateful to the Learned Counsel for the contesting Defendants for reminding me of these observations, but unfortunately his attention escaped from the well-known saying of Lord Bramwill about "a man who makes a statement without care for its truth or falsity" in *Dery. v. Peak* 14 A.C. 337 which I do not wish to repeat here in view of the above observations of the Supreme Court, but with all frankness I confess my inability to visualize what the learned Law Lord would have said about Guha, Roy and Bhattacharya. Restraining myself as far as possible I will record below my impression about these three witnesses and before doing so I will recall what Bhattacharya had said, "we should have been more cautious", and I repeat they should have been more cautious--cautious about themselves as good name and reputation and above all their character were "the immediate jewels of their souls" and once lost are lost for ever.

166. Roy is a member of the Bar. He belongs to the noble profession cherished by all. The Courts always expect frankness and truthfulness from the members of the legal profession. Nay, the Court always rely and act on a mere statement from the Bar. Members of the legal profession are the part and parcel of the entire judicial system of all civilized countries. And with a heavy heart I say that he has totally disappointed me and has done immense harm to himself not to speak of the general body of members of the Club. His self-confidence in examination-in-chief was completely lost later on and in choked voice and "liquid eyes" left the witness-box ashamed and perturbed fully realizing that he should not have given false evidence. All that I need to say about Bhattacharya is that he is the most unfortunate victim of his second nature which sealed his lips in such a fashion that truth was absolutely helpless and failed to find its way out. With a deceiving smile of innocence he could not help himself as his second nature went on creating cold-blooded and glaring falsehood after falsehood from the beginning to the end.

167. When the Learned Counsel Mr. Subimal Roy said that he had rarely come across such a truthful and well-mannered witness as Guha for a moment, I could not believe my ears and pondered whether he had really said so. But when he

repeated and of course repeated without relying on a single question of Guha, I immediately appreciated that he was vainly trying to discharge his primary obligations. But did Guha deserve such a certificate from a leading member of the Bar when scruple is foreign to him and excepting at the unguarded and heat of the moment truth could only come out twice or thrice through the crack-holes of falsehood ? There can be no doubt that he is a perjurer and an unscrupulous man, but he had no business to insult the cross-examining counsel and to be arrogant and impertinent in the open Court. Within half an hour of his cross-examination Guha lost his temper and as the cross-examination proceeded he became more and more arrogant and so the Learned Counsel Mr. Mitra had to ask him not to be angry, but the witness did not pay any heed to it. The witness was so furious and his mannerism was so nasty that the learned cross-examining counsel Mr. P. K. Das being mortally aggrieved had to use the expression "barking" twice in succession. In spite of objection of Mr. Roy I allowed the word "barking" to remain as it was not at all an inappropriate expression, and if the matter goes up at least the cold print may give a glimpse as to how far this witness was arrogant, impertinent and uncivil in the-open Court and misbehaved with the cross-examining counsel although he was in the witness-box.

168. In spite of all these facts it was urged that the Plaintiffs had no cause for apprehension and so this action qua time must fail. This argument was based solely on the averments made in the plaint and on a few cases but not by way of demurrer. Evidence on record on this point was not even touched. The cases relied on in support of, and, in opposition to, this contention do not lay down any new proposition of law from what was said more than a century and a half ago to which reference will be made later on, and so it is not necessary to go into those cases cited from the Bar.

169. The great apprehension of the Plaintiffs as to this fraudulent mode of holding the election has become true and the Defendants Nos. 2 to 4 have rigged the election. These facts come out in evidence and they relate to the period after the institution of the suit and now going before the institution of the suit the salient features were that no reply was given to the said two letters of Dr. Das where those great apprehensions of the members were recorded.

170. Memorandum of 200 members submitted to the Chairman of the Election Board making a reasonable request to send the ballot papers under registered post was thrown into the waste-paper basket. Dr. Das personally met the Defendant No. 1 with a request to send the ballot papers under registered post, but his request was not complied with. Dr. Das then went to Roy and again his request was turned down. Then he went to the Treasurer of the Club, but the Treasurer refused to comply with the request of Dr. Das. From door to door Dr. Das went and from everywhere he was turned out. He rang up Guha and Guha refused to accede to his request by saying that he knew how to conduct the election although Dr. Das was a candidate for the post of General Secretary and so was Guha. No doubt, Guha had denied this fact, but he being a perjurer I can

place no reliance on his denial and accept what Dr. Das has said as true. It was Guha who said to Dr. Das that the purported sending of ballot papers under alleged certificates of posting was a fraudulent election as most of the ballot papers would not be posted at all. This fact was falsely denied by Guha and I reject his denial. It was Guha who raised the slogan that no election would be held if the ballot papers were not sent under registered post, and again Guha denied this fact, and I again reject this false denial. It was Roy who was swept away by the flood of registered ballot papers and it was he who brought a grand success to Guha by the jugglery of certificates of posting with the help of Bhattacharya in the previous election. Many members including Dr. Das did not receive their ballot papers in the previous election as the ballot papers were alleged to have been posted under certificate of posting.

171. Past history of Roy, Bhattacharya and Guha coupled with slaughter of ordinary courtesy by refusing to give any reply to the letters of the Vice-President of the Club including the complete sidetracking of memorandum of 200 members and above all Guha's complete influence, domination and control over the Defendants Nos. 2 to 4 and the significant silence and complete absence of the President caused great apprehension in the minds of many a member to the extreme probability of imminent danger of losing their voting rights in the ensuing election as they had such an experience in the previous election. Evidence on record clearly shows, beyond all doubt whatever, that these apprehensions were fully justified. These interlopers of ballot papers did threaten to invade and to take away the voting rights of many members of the Club by fraudulent means and the moment the injunction was dissolved the fraud was let loose with vengeance and was perpetrated by these "dexterous knaves" on a large number of members of the Club by fraudulently taking away their voting rights by means of manufactured Ex. G2 and by fraudulently handing over "plenty" of ballot papers to Guha.

172. In 1816 the great Equity Judge Lord Chancellor Eldon in *Crowder v. Tinkler* (1816) 19 Ves. 617 said that the "great apprehension" of "extreme probability of irreparable injury to the property to the Plaintiffs, including also danger to their existence", are the matters for consideration in granting relief? in these actions. The case before me is stronger than the case that was before Lord Eldon as in that cast there was no threatened betrayal of confidence which the Courts of Equity with strong hands always prevented as a matter of course. If the case before me does not come within this type of action one of the greatest features of Equity jurisprudence relating to preventive justice administered in Courts of Equity has to be re-written which I refuse to do and I overrule the contention and hold that this action was the only action which could be brought to this Court on December 6, 1968, and it was rightly brought.

173. Then it was said that the two Plaintiffs having received their respective ballot papers subsequent to the institution of the suit must be non-suited as their cause of action has been extinguished. There, cannot be any doubt that the

voting right of a member is his personal right, but apart from the voting right and its exercise every member, whether he is a voter or not, is entitled to see that the election is held fairly and impartially which can only be ensured if the ballot papers are posted to each and every voter. The two Plaintiffs being members and voters are entitled to see that all the ballot papers, were in fact posted to all the voters, and as most of the ballot papers were not at all posted and were merely handed over to Guha, right of the Plaintiffs to a fair and impartial election was infringed and instead of extinguishing the original cause of action it has further strengthened it. Moreover, posting of ballot paper to each voter under Rule 38(h) is mandatory and as it has been infringed they are entitled to continue with this suit. The Plaintiffs and all the members form same class of persons and they have a common interest in the subject-matter of the litigation and their right to a fair and impartial election have been denied and all of them have been wronged. It does not matter in the least that: the two Plaintiffs have received their ballot papers when a "plenty" of them were not at all posted. Their common rights being deliberately infringed and violated the Plaintiffs are quite competent to maintain this action and mere receipt of the ballot papers by them will not extinguish their cause of action.

174. The matter, however, does not rest here. Dr. Das was added as a party to these proceedings after the alleged despatch of ballot papers and it is to be remembered that he is contesting Guha for the post of General Secretary, still his ballot paper was not at all posted. Many witnesses called by the Plaintiffs in the: Appeal Court and before me met with same fate. Nevertheless the Plaintiffs must receive their ballot papers as they have filed this representative action and of all persons Guha must have "plenty" of ballot papers.

175. It was a deep-rooted ugly plan to send the ballot papers to the Plaintiffs. This guile, trickery and subtlety of sending two ballot papers to two Plaintiffs was not only a fraud on them and on all the members of the Club, but it was also a fraud on this Court. Whenever any matter is sub-judice any action which may touch even the fringe of the cause must be done bona fide. It is a fraud on the Plaintiffs to use the manufactured Ex. G2 and alleged minute book of the Election Board. It is also a fraud on the Court. Sending of ballot papers only to the Plaintiffs and plenty to Guha is the worst kind of fraud that one can ever imagine. This fraud has vitiated all acts of the Defendants Nos. 2 to 4 and all their acts are no-good. The defence as to the sending of ballot papers to the Plaintiffs is nothing but a fraudulent defence and this very fraud has cut at the very root of the fraudulent defence and I overrule the same.

176. It was said that if I set aside the acts of the present Election Board and leave the matter here the Executive Committee is quite competent to dissolve the present Election Board and in its place can constitute a new Board with three independent persons in which the President will be the fourth one by virtue of his office. In the facts and circumstances of this case, I am unable to accept this contention for the obvious reason that even if a new Election Board is appointed,

the Executive Committee is so constituted that it is incapable of appointing three independent members in it as most of the members of the Executive Committee are wholly dominated and controlled by Guha and it is they who wanted to make Guha the "life secretary" of the Club which is only possible by holding a fraudulent election in the same manner as attempted by Nandy, Bhattacharya and Roy.

177. It was then said that the general body of members were capable of constituting another Election Board to conduct the unfinished election. To that my simple answer is that the general body of members have no residual power to appoint the Election Board as this power is exclusively vested in the Executive Committee and I am unable to accept this contention.

178. It was further said that by a majority decision in a Special Meeting the rules of the Club can be altered by conferring special power on the general body of members to supersede an Election Board and in its place to appoint a new Board and the same being the internal affairs of the Club this Court cannot interfere at all. This argument is devoid of all merits as the Court is not concerned with future rules of the Club and cannot speculate as to what would be the effect of such a rule. In *Boschock Property Company Ltd. v. Fuke* (1906) Ch. 148; *Swinfen Edey J.*, as he then was, said:

The articles, until altered, bound the share-holders in general meeting as much as the Board.

This observation is equally applicable to the rules of the Club and I reject the above contention.

179. Without touching the evidence on record it was contended that even if it could be said that all these acts were done irregularly still the Court had no power to interfere on a further assumption that the general body of members in exercise of residual power were capable of ratifying these acts of the Executive Committee and the Election Board respectively for which strong reliance was placed on *Murarka Paint and Varnish Works Ltd. Vs. Mohanlal Murarka and Others*, and *Bamford v. Bamford* (1968) 2 All E.R. 655. The principle laid down in these two cases as to the residual power of the general body to ratify mere irregular acts cannot be disputed, but it has no application for the simple reasons that all these acts are not mere irregular acts but they are of substance and have cut at the very root of the matter and moreover they can never be ratified as they were done mala fide to achieve the fraudulent objects and fraud having been perpetrated all these acts are vitiated and they are all non est. Even apart from fraud it will be ultra vires the powers of the general body to ratify these immoral acts as one of the objects of the Club is to promote "moral" of the members.

180. It was next contended that the suit is bound to fail as the Plaintiffs and the supporters of Guha cannot have the "same interest" within the meaning of Order 1, Rule 8 of the Code. Rule 1 was amended on April 2, 1938, and the amended

Rule which is applicable to this Court is set out.

181. Strong reliance was placed in *Harkisandas Shivilal and Ors. v. Chhaganlal Narsidas* ILR 40 Bom. 158 (163) where a caste was divided into two sections known as Majumpuria and Sheheria. Accounts and the funds of each section were separately kept by the Defendant No. 1 who was the head-man of the whole caste. The Plaintiffs who belonged to one of those castes were authorised to bring that suit, inter alia, for accounts and recovery of monies at a meeting of the Majumpuria section which was however irregularly convened. After the Plaintiffs filed that suit under Order 1, Rule 8 of the Code 112 members of that section filed affidavits supporting the Plaintiffs but 70 other members filed affidavits supporting the Defendant No. 1. It was held that the suit as constituted was not maintainable for the Plaintiffs could not represent nor sue on behalf of those members who were supporting the Defendant No. 1. Dismissing the suit *Bachelor J.* held (13):

I am of opinion that this suit was mis-conceived and must fail. As I have shown, the Plaintiffs purported to be suing on behalf of the whole Majumpur section, or sub-caste, by virtue of Order 1, Rule 8. But it seems to me clear upon the very face of things that the Plaintiffs could not, under Order 1, Rule 8, sue on behalf of those numerous members of the Majumpur section, who admittedly were and are in diametrical opposition to them of this present Controversy. In no sense could these persons be said, I think, to be represented by the Plaintiffs in this suit. For in no sense could it be said, as the language of the Rule requires, that they and the Plaintiffs held the same interest in the suit and that the Plaintiffs in bringing this suit were suing for and on behalf of these dissentient members.

182. In *Sivathal Periyava Nadar and Ors. v. Nana and Ors.* AIR. 1921 Mad. 182 (684, 685) six persons as members of Nadar community of a village with the permission of Court filed the representative suit against the Defendants alleging that they have violated the caste rules and practice relating to the caste temple and after notices were issued 200 persons applied to be joined as Plaintiffs and many others as Defendants. Court below non-suited the Plaintiffs and on appeal the judgment of Bombay High Court in *Harkisan das* case (*Supra*) was relied on but the Division Bench of the Madras High Court expressly dissented from it and *Napier J.* observed as follows:

The reasons given by the learned Judges was that "in no sense could it be said, as the language of the Rule requires, that they (that is, the opposite party) and the Plaintiffs held the same interest in the- suit and that the Plaintiffs in bringing this suit were suing for or on behalf of these dissentient members." If this reading of Rule 8 is to be adopted, it seems to me that this provision can never be applied where any question arises with regard to which there is a variance among the members of community which some of these members desire to have settled by Court. Where there are large communities, it is obvious that there must undoubtedly be differences of opinion and if no suit can be brought by any member of a caste under Order 1, Rule 8, unless they represent the views of

every member of the community or of a majority whose views bind the whole, this Rule is inapplicable to any suit brought to decide questions in issue between the members and can only be availed of for the purpose of bringing suits on behalf of a community against a third party. I can only say that I have never heard the proposition put forward before us as a ground of objection to suits which have been filed to ascertain the rights of members of the community inter se. It seems to me that the sole object of* this section is to provide a simple means by which as many persons as possible who are members of the same or are equally interested in certain affairs, can be brought together and a judgment can be given which will bind them all.

183. Krishnan J. after expressly dissenting from Harkisandas's case (Supra) observed:

Under the Rule it is the permission of the Court and not the authority of those represented that entitles him to represent them. The Rule provides for notice to be given to all parties, and if any one wishes that he should not be represented by the Plaintiffs, he can appear and object and may be made a Defendant, if necessary.

184. In A. Mohammad Hassan Sahib and Others Vs. The Podanur Sunnath Jamath by President C.A. Alli Sahib and Others, the Petitioner, five in number, purporting to represent the Muslim members of a sect applied under Order 1, 8 of the Code to file the suit against the Defendants who were said to be the representatives of the Muslim society. During the course of hearing of that application 134 persons filed affidavits supporting the petitions and, on the other hand, 97 persons filed affidavits disputing the representative capacity of the Petitioners to file the suit. The trial Court refused to grant the permission, but on revision the Madras High Court set aside the said order and Gobinda Menon J. held as follows:

I do not wish at this stage to discuss in any detail all the decisions to which my attention has been drawn; suffice it for the present purpose to refer to the judgment of Ananthakrishna Aiyar J. in AIR 1929 Mad. 1944 wherein the learned Judge discusses" the earlier decisions on the point and holds that the Court should not refuse leave to file a suit simply because there are, in opposition, quite a number of people contesting the Plaintiff's claim. It is not possible, even in an ideal society, to get unanimity of opinion on many matters and, therefore, the learned District Munsif, in this case, ought to have considered the question regarding the bona fide nature of the Plaintiffs' claim to file a suit.

185. His Lordship further held (15):

The learned District Munsif in this case has not gone into the question as to whether the Plaintiffs' claim is bona fide and whether the Plaintiffs are agitating a proper claim. Without deciding this question, he should not have, for the simple reason that the parties are equally balanced as it were, 134 on the one side and 97 on the other, refused the claim of the Plaintiffs. In these

circumstances, the order of the learned District Munsif refusing permission to sue is set aside; and the lower Court is directed to hear the matter afresh and decide whether the Plaintiffs' claim is bona fide. If the Plaintiffs are acting bona fide, then leave should be granted for them to file the suit.

186. In *B. Chandappa Indra v. M. Jagathpala and Ors.* AIR 1949 Mad. 653 (654) the Petitioner as a member of a Jain Sangham applied under Order 1, Rule 8 of the Code to sue in a representative capacity the Secretary of the Sangham and 9 other members of the committee for certain relief^s including a direction for calling a meeting of the general body of members for electing new office-bearers. Several members of the Sangham filed affidavits opposing the Petitioner's right to represent them and the learned Subordinate Judge relying on *Harkisandas* case (Supra) dismissed the application. The matter went up to the High Court after following the previous decisions and expressly dissenting from *Harkishandas* case Mack J. said:

The first condition for the operation of Order 1, Rule 8 is that there should be "numerous persons having the same interest in one suit". In such a case, one or more of such persons may, with the permission of the Court, sue or be sued on behalf of all persons so interested. It is not necessary that all members of a Sangham or of an association should have an identical interest in the suit. There may be opposition between two groups and bona fide representatives of each group can file a representative suit to have such disputes resolved under Order 1, Rule 8 to save multiplicity of suits. The sole criterion is whether the Plaintiff is or the Plaintiffs are representatives of numerous persons having the same interest in one suit. In the present case, the mere fact that 12 -members of the Sangham have appeared and filed affidavits dissociating themselves from the Petitioner's suit and strongly opposing him, would not per se deprive the Plaintiff of his right to file a representative suit.

187. In *Kodia Goundar and Another Vs. Velandi Goundar and Others*, delivering the judgment of the Full Bench of the Madras High Court Naidu J. said:

The condition necessary for the maintainability of a representative suit is that the persons on whose behalf the suit is instituted must have the same interest. The interest must be common to them all or they must have a common grievance, which they seek to get redressed. Community of interest is, therefore, essential and it is a condition precedent for bringing a representative suit. The right of the claim which they seek to establish in the suit must be one which is common to them all and each individual among the body of persons must be interested in the litigation.

188. Again the learned Judge observed:

On the plain language of Order 1, Rule 8 the principal requirement to bring a suit within that Rule is the sameness of interest of the numerous persons on whose behalf or for whose benefit the suit is instituted, and if that requirement is satisfied and provided the other condition as to notice is also satisfied, there is

no reason why such a representative suit should not be allowed. In deciding, therefore, whether Leave has to be granted or in considering whether a suit already instituted under Order 1, Rule 8 is maintainable the principal consideration that should weigh with a Court is whether it is satisfied that there is sufficient community of interest as between the Plaintiffs or the Defendants as the case may be to justify the adoption of the procedure provided under Order 1, Rule 8. The object for which this provision is enacted is really to facilitate the decision of questions which a large body of persons are interested without recourse to the ordinary procedure.

In cases Where the common right or interest of a community or members of an association or large sections is involved there will be insuperable practical difficulty in the institution of suits under the ordinary procedure, where each individual has to maintain an action by a separate suit. To avoid numerous suits being filed for decision of a common question, Order 1, Rule 8 has come to be enacted. The nature of the claim whether it is a suit for a declaration of a right, or an injunction or an action for money or contract or on tort--is not very material in considering whether a suit could be filed under the simplified procedure of Order 1, Rule 8. But, as already observed, it is the existence of a sufficient community of interest among the persons on whose behalf or against whom the suit is instituted that should be the governing factor in deciding as to whether the procedure provided under Order 1, Rule 8 could properly be adopted or not. Whatever be the law in England, and the interpretation placed on the terms of Order 16, Rule 9 of the Supreme Court rules by the Judges there, we consider that in India, where rights of communities to own property is recognised, it is necessary that Order 1, Rule 8, C.P. Code, should receive an interpretation to sub serve the practical needs of the situation.

189. It is not necessary to go into the case of Jhajharia Bros. Ltd. Vs. Sholapoor Spinning and Weaving Co. Ltd., as Amir Ali J. himself said that he was not "interested in the point" and moreover the observation regarding granting of permission under Order 1, Rule 8 made therein has no application here as this leave was granted by the Court and not by the officer. In Bimal Behari Sarkar and Others Vs. State of West Bengal and Others, on Order 1, Rule 8, B. N. Banerjee J. observed as follows:

The provision of the Rule is an exception to the general rule that all persons interested in suit must be made parties thereto. Reasons of convenience require that in suits where there is a community of interest amongst a large number of persons, a few should be allowed to represent the whole so that trouble and expenses may be saved. The provision of this Rule applies only (1) if the parties are numerous, (2) they have the same interest, and (3) necessary permission is obtained from the Court and notice is given. The term "numerous" is not a term of art and is not synonymous with the word "innumerable" and the Rule does not fix any limit to the number. The words "same interest" in the Rule do not mean the same beneficial proprietary right in the subject-matter of the suit.

190. In *Kumaravelu Chettiar and Ors. v. Ramaswami Ayyar and Ors.* L.R. 60 IndAp 278 (286) on Order 1, Rule 8 Lord Blanesburgh said:

It is an enabling rule of convenience prescribing the conditions upon which such persons when not made parties to a suit may still be bound by the proceedings therein. For the section to apply the absent persons must be numerous: they must have the same interest in the suit which, so far as it is representative, must be brought or prosecuted with the permission of the Court. Of such permission being given it becomes the imperative duty of the Court to direct notice to be given to the absent parties in such of the ways prescribed as the Court in each case may require, while liberty is reserved to any represented person to apply to be made a party to the suit.

191. In *Ahmad Adam Salt and Ors. v. M. E. Makori and Ors.* AIR 1964 S.C. 107 (114) the point involved before the Supreme Court was whether the previous suit filed u/s 92 of the Code in which a scheme was framed operated as *res judicata* in the subsequent suit. After discussing the provisions of Sections 11 and 92 of the Code Gajendragadkar J. (as he then was) observed as follows:

Where a representative suit is brought u/s 92 and a decree is passed in such a suit, law assumes that all persons who have the same interest as the Plaintiffs in the representative suit were represented by the said Plaintiffs and, therefore, are constructively barred by *res judicata* from repaginating the matters directly and substantially in issue in the said earlier suit.

A similar result follows if a suit is either brought or defended under Order 1, Rule 8. In that case, persons either suing or defending an action are doing so in a representative character, and so, the decree passed in such a suit binds all those whose interests were represented either by the Plaintiffs or by the Defendants. Thus, it is clear that in determining the question about the effect of a decree passed in a representative suit, it is essential to enquire which interests were represented by the Plaintiffs or- the Defendants. If the decree was passed in a suit u/s 92, it will become necessary to examine the plaint in order to decide in what character the Plaintiffs had sued and what interests they had claimed. If a suit is brought under Order 1, Rule 8, the plea taken by the Defendants will have to be examined with a view to decide which interests the Defendants purported to defend in common with others.

192. In *State of Andhra Pradesh Vs. Gundugola Venkata Suryanarayana Garu*, the point involved was whether the suit was maintainable as the notice u/s 80 of the Code was served by two persons whereas one of them instituted the representative suit under Order 1, Rule 8 representing all the inhabitants of a village. Delivering the judgment of the Supreme Court Shah J. said as follows:

The Plaintiff, it is true, alone filed the suit, but he was permitted to sue for and on behalf of all the imarndars by an order of the Court under Order 1, Rule 8 Code of Civil Procedure.

To enable a person to file a suit in a representative capacity for and on behalf of numerous persons where they have the same interest, the only condition is the permission of the Court. The provision which requires that the Court shall in such a case give, at the Plaintiff's expense, notice of the institution of the suit to all persons having the same interest, and the power reserved to the Court to entertain an application from any person on whose behalf or for whose benefit the suit is instituted, indicate that no previous sanction or authority of persons interested in the suit is required to be obtained before institution of the suit.

193. His Lordship further observed:

A suit filed with permission to sue for and on behalf of numerous persons having the same interest under Order 1, Rule 8 is still a suit filed by the person who is permitted to sue as the Plaintiff; the persons represented by him do not in virtue of, the permission become Plaintiffs in the suit. Such other persons "would be bound by the decree in the suit, but that is because they are represented by the Plaintiffs not because they are parties to the suit unless by express order of the Court they are permitted to be impleaded.

194. Coming now to the English decision on the corresponding Rule in *Watson v. Cave* 17 Gh.D. 19 (21, 22) in dismissing an application for leave to appeal from an order appointing a Receiver by one of the bondholders who was not named as a party in that representative action James L.J. held:

It is always possible that a person professing to represent the parties is not really representing them; but then the mode of remedying that is not for any person who thinks himself aggrieved to appeal from an order which has been professedly made on his behalf but to make some application to the Court below, where if a proper case is made out, no doubt the Court would allow such person to be added as a Defendant, and then he could apply as a Defendant to get rid of the order or to take the conduct of the suit out of the hands of the Plaintiff, who professes to represent but does not in truth represent the wishes of the great body of the bond-holders.

195. In the same case Cotton L.J. observed:

It is a suit called a representative suit, and the Plaintiff sues on behalf of himself and all others who have the same interest as himself, that, not all those who take the same view of what is for their benefit, but all those who being interested jointly with him in some property have not taken any steps to assert their rights adversely to those which the Plaintiff chooses to assert. Here the Plaintiff, who has the actual management of the suit, has applied for and obtained an order which does not bind any property or any interest in property of an absent party but produces an effect which one of the persons who are Plaintiffs by representation thinks is not for his benefit, although the actual Plaintiff On the record thinks it is.

196. In *McCheane v. Gyles* (No.2) L.R. (1902) 1 Ch. 911; Backley J. (as he then

was) observed:

In a representative action an action brought by one or more persons purporting to represent a class- one of the class may come forward and say, "The Plaintiff does not represent me. Add me as a Defendant". In that case the applicant may be added although the Plaintiff objects.

197. The most important case, so far as England is concerned, is *The Duke of Bedford v. Ellis and Ors.* (1901) A.C. 1 (7-11) in which the Appellant was the owner of Covent Garden Market which was regulated by the provision of an Act of Parliament and under which the sellers were only liable to pay rent and toll to the Duke and these sellers were divided into two classes, one class consisted of growers of fruits, flowers, vegetables, etc. and the other one consisted of middlemen. The Act gave some preferential rights and advantages to the growers and not to the middlemen and the middlemen were to pay higher toll than the growers to the Duke. The action was brought by several Plaintiffs for themselves and representing all growers alleging that the Duke was ignoring their rights and was favoring the middlemen from whom he was authorised to extract higher tolls and they claimed for an injunction against the Duke restraining him from infringing their rights and for rendition of account as to the monies taken from them in excess. After the writ was issued the Duke applied to set it aside alleging that the representative action was not maintainable, but the House of Lords by a majority decision overruled the said objection. Lord Macnaghten said as follows:

The principal ground is that the Plaintiffs are not entitled to sue in a representative character in defence of their alleged statutory rights. The other ground, which is a matter of very slight moment, is that they cannot join as co-Plaintiffs in respect of their several grievances. The whole difficulty in the present case has arisen from confusing these two matters. They have really nothing to do with each other. If the persons named as Plaintiffs are members of a class having a common interest, and if the alleged rights of the class are being denied or ignored, it does not matter in the least that the nominal Plaintiffs may have been wronged or inconvenienced in their individual capacity. They are none the better for that and none the worse. They would be competent representatives of the class if they had never been near the Duke; they are not incompetent because they may have been turned out of the market. In considering whether a representative action is maintainable, you have to consider what is common to the class, not what differentiates the cases of individual members.

198. Again the learned Law Lord said:

Now it cannot be said that the Plaintiffs in this case are asserting any beneficial proprietary right. If that be a condition of suing in a representative character the Plaintiffs are out of Court. But, it seems to me that there is no reason whatever for so restricting the rule, which was only meant to apply the practice of the Court of Chancery to all divisions of the High Court. The old rule in the Court of

Chancery was very simple and perfectly well understood. Under the old practice the Court required the presence of all parties interested in the matter in suit, in order that a final end might be made of the controversy. But when the parties were so numerous that you never could "come at justice", to use an expression in one of the older cases, if everybody interested was made a party, the rule was not allowed to stand in the way. It was originally a rule of convenience: for the sake of convenience it was relaxed. Given a common interest and a common grievance, a representative suit was in order if the relief sought was in its nature beneficial to all whom the Plaintiff proposed to represent. To limit the rule to persons having a beneficial proprietary interest would be opposed to precedent, and not, I think, in accordance with common sense.

199. Thereafter it was said by the learned Law Lord:

There are plenty of other cases which show that, in order to justify a person suing in a representative character, it is quite enough that he has a common interest with those whom he claims to represent. In *Warrick v. Queen's College* the question was whether persons with titles diverse in origin and rights in some respects distinct could be combined as Plaintiffs in a suit to redress a grievance common to all. No such question can arise here. All growers have the same rights. They all rely on one and the same Act of Parliament as their common character.

200. Again the learned Law Lord observed:

There is one point--a point of no practical importance on which I venture respectfully to differ from the Court of Appeal. I doubt whether it is accurate to say that in the case of representative suits we have advanced a long way since the days of Lord Eldon. It is, of course, not necessary now-a-days to go to a Court of Law in order to establish legal rights. But in all other respects I think the rule as to representative suits remains very much as it was a hundred years ago. From the time it was first established it has been recognised as a simple rule resting merely upon convenience. It is impossible, I think, to read such judgments as those delivered by Lord Eldon in *Adair v. New River Company* in 1805 and in *Cockburn v. Thompson* in 1809, without seeing that Lord Eldon took as broad and liberal a view on this subject as anybody could desire. "The strict rule he said, "was that all persons materially interested in the subject of the suit, however numerous, ought to be parties but that being a general rule established for the convenient administration of justice must not be adhered to in cases to which consistently with practical convenience it is incapable of application". "It was better", he added, "to go as fair as possible towards justice than to deny it altogether". He laid out of consideration the case of persons suing on behalf of themselves and all other?s, "for in a sense", he said "they are before the Court". As regards Defendants, if you cannot make everybody interested a party, you must bring so many that it can be said they will fairly _and honestly try the right. I do not think, my Lords, "that we have advanced much beyond that in the last hundred years, and I do not think that it is necessary to go further, at any rate,

for the purposes of this suit.

201. In *The Taff Vale Railway Company v. The Amalgamated Society of Railway Servants* T (1901) A.C. 426 (439, 442) question was whether a registered trade union could be sued in its name and dealing with it Lord Macnaghten observed as follows:

Mr. Haldane, indeed, was bold enough to say that if a wrong was committed by a body of persons, acting in concert, who were too numerous to be made Defendants in an action, the person injured would be without remedy unless he could fasten upon the individuals who with their own hands were actually doing the wrong. Then he was asked, what would he say to such a case as this: Suppose there were a manufactory belonging to a co-operative society, unregistered, and composed of a great number of persons (as there well might be, but for the provision in the Companies Act making illegal an unregistered trading society consisting of more than twenty members) and suppose such a manufactory were poisoning a stream or fouling the atmosphere to the injury of its neighbors, might it do so with impunity? Mr. Haldane said, yes, you must pounce upon the individual offenders. It seems to me that this is a reduction to absurdity. I should be sorry to think that the law was so powerless; and therefore it seems to me that there would be no difficulty in suing a trade union in a proper case if it be sued in a representative action by persons who fairly and properly represent it.

202. Lindley L.J. said this:

The rules as to parties to common law actions were too rigid for practical purposes When those rules had to be applied to such societies. But the rules as to parties to suits in equity were not the same as those which governed Courts of common law, and were long since adapted to meet the difficulties presented by a multiplicity of persons interested in the subject-matter of litigation. Some of such persons were allowed to sue and be sued on behalf of themselves and all others having the same interest. This was done avowedly to prevent a failure of justice: See *Meux v. Maltby* and the observations of Sir George Jessel M.R.

The principle on which the rule is based forbids its restriction to cases for which an exact precedent can be found in the reports. The principle is as applicable to new cases as, to old, and ought to be applied to the exigencies of modern life as occasion requires. The rule itself has been embodied and made applicable to the various Divisions of the High Court by the Judicature Act 1873, Sections 16 and 23-25, and Order XVI, Rule 9; and the unfortunate observations made on that rule in *Temperton v. Russell* have been happily corrected in this House in the *Duke of Bedford v. Ellis* and in course of the argument in the present case.

203. In *Market and Company Ltd. v. Knight Steamship Company Limited* (1910) 2 K.B. 1021 S.S. Knight Commander belonging to the Defendants and carrying cargoes belonging to two sets of Plaintiffs and others was sunk by Russians during the Russo-Japanese war, on the ground that she was carrying contraband

of war, with the result both the ship and cargoes were totally lost. Two sets of the Plaintiffs brought two separate actions for selves and representing all the cargo-owners against the Defendants for damages, and after service Of writs the Defendants applied to set them aside on the ground that those representative actions were not maintainable which were dismissed by the Master but on appeal by a majority decision were set aside and appeals were allowed on the ground that the bills of lading of each cargo-owners were different and the goods of each cargo owners were to be carried to different destinations and there was no "common interest" although they might have a "common wrong". It is not necessary to go into this case any further as it does not lay down any new principle of law nor it is necessary to decide whether the majority decision was wrong in view of the pronouncements of the House of Lords in the above two cases.

204. In *Walker v. Sur and Ors.* (1914) 2 K.B. 930 (934) Vaughan Williams L.J. dealing with the corresponding English rule observed:

The rule, as it stands, does not purport to leave it to the mere will or choice of the Plaintiff or of the Defendants, nor to give a right in either case of selection at the choice of a. Plaintiff who wishes to sue representative members of an unincorporated society. As I understand the rule, it lies with the Judge to give the authority, and if he thinks it a case in which the Plaintiff may properly sue the persons that he proposes to sue as people proper to be authorised to defend in such cause or matter on behalf of or for the benefit of all persons so interested then the order may be made.

205. In *Smith v. Cardiff Corporation* (1953) 2 All E.R. 1373 the Defendant Corporation was the owner of a large number of different types of buildings and more than 13,000 weekly tenants were occupying different rooms and flats under Housing Scheme each having a separate contract, but terms of all those contracts were substantially the same except as to rents. The Corporation intended to introduce a new scheme under which rent was to be paid on the basis of income. The effect of the proposed scheme was that about 5,000 tenants were not to pay the increased rent in view of their income but 9,000 tenants were to pay more than they were paying. Before the scheme could be introduced the existing tenancies of all the tenants were to be determined and new agreements with each tenant had to be entered into and, accordingly, the Corporation sent application forms to each of the tenants which were to be returned by them showing their respective income and other particulars mentioned therein. Thereafter a meeting was held by the tenants and a tenants' protection committee was formed and four Plaintiffs brought the action for selves and representing all the tenants challenging the vires of the proposed scheme and sought for an injunction to prevent the. introduction of the proposed scheme. On the application of the Corporation the writ was set aside and, on appeal, it was held that the Plaintiff could sue in their individual rights but they could not represent 5,000 tenants whose interests were directly adverse to the

interest of 9,000 tenants as will appear from the relevant observations set out below:

The nature of this scheme makes it plain that the differentiation will operate so that the more affluent of the tenants will "subsidize" the less affluent. Indeed, it is pointed out that some five of the thirteen thousand will suffer no increase of rent at all. It is true that they may do at some future date, but, of course, only if their then existing contracts are first determined; it is also true that if they fail to fill up this form, they will cease to be the over-privileged and become the under-privileged. Yet, when one does apprehend that the main characteristic of this scheme is that the more will subsidize the less affluent, it is at once apparent that there are two classes whose interests are not only not identical, but are in conflict, namely, the subsidizers and the subsidized. I agree with Glyn-Jones J. that it would be shutting one's eyes to realities to suppose that if the Plaintiffs succeeded in this action they would all continue to remain at what are called in the scheme the basic rents, and that the Defendants will be so defeated that they will fail to think of some other scheme for implementing their obligations to "make ends meet". Indeed, any possible alternative scheme, such as the town clerk in his affidavit adumbrates, shows that there will be a considerable class whom the Plaintiffs now purport to represent who are almost certain to be worse off, if this scheme be held invalid, than they will be under the scheme itself. But I need not, I think, pursue the matter beyond pointing out that there are, apart from those in an intermediate position, two distinct classes whose interests are in conflict--those, on the one hand, who will benefit by having no present increases and those, on the other, who will have what may be called inflated increases. (Per Sir Raymond Ever shed, M.R. at p. 1377) Counsel for the Defendants went so far as to argue that these thirteen thousand tenants could not, for the purposes of any dispute, constitute a class on whose behalf a representative action could properly be brought. He founded himself on the contention that here there is not a class of persons entitled to a common right conferred on members of that class by, for example, an Act of Parliament (as in *Duke of Bedford v. Ellis*), and there is not any common right properly so called. He said, in effect, that there was no more than an aggregate of individuals each bound to the Defendants by a separate contract of tenancy peculiar to himself and conferring and imposing rights and obligations on him separately as an individual and not as a member of a class. I am not prepared to accede to that argument in its widest form, and I find it unnecessary (as does Sir Raymond Ever shed M.R.) for the purpose of deciding this case to determine whether or not, if any and if so what circumstances or for the purposes of any, and if so what dispute a body, of persons such as the tenants of the council houses in the present case are capable of forming a class on whose behalf a representative action can properly be brought. The only questions which it is necessary to answer for the purpose of deciding this case are whether or not these thirteen thousand tenants are a class of persons having a common interest for the purposes of this present dispute, they can be said to have a common grievance, and, if so, whether or not the

relief claimed in relation to this present dispute is in its nature beneficial to all. The true grievance is not that rents are being increased, but that they are being increased, not on a uniform but on a differential basis. That being the true nature of the grievance, it seems to me impossible to maintain that in this particular dispute these thirteen thousand tenants constitute a class having a common interest in any relevant sense. It seems to me impossible to maintain that they had in this dispute a common grievance or that the relief sought is beneficial to all. On the contrary, it seems to me necessarily to follow that a tenant who under this scheme qualifies for the subsidy--that is to say, a tenant whose rent is not increased--has an interest which may be diametrically opposed to that of a tenant who suffers the increase. (Per Jenkins L.J. at pp. 1379-80) It concerns merely a bald point of procedure, in regard to which it has seemed to me that success does not profit and defeat does not hurt. The writ does, however, direct attention to a particular scheme, and, therefore, while the merits of the dispute which will have to be decided are not before us, we have to look at the scheme in order to see whether a representative action can properly be brought. It seems to me that a mere perusal of the scheme shows that there" are many tenants who are not today and may not ever be adversely affected, so far as their rents are concerned, by this scheme. There is nothing I can add to the reasons that have already been assigned by my Lords in support of the view that the relief sought is not in its nature beneficial to all tenants. (Per Morris L.J. at p. 1380)

206. I have extensively quoted the observations as the contesting Defendants strongly relied on them. Facts clearly reveal that there was no common interests as the interests of 5,000 tenants were directly adverse to the interests of 9,000 tenants and the action was not for the benefit of 5,000 tenants.

207. In Bullen & Leake's Precedents of Pleadings (10th ed., p. 16) it is stated:

A Plaintiff suing on behalf of himself and other members of a class may except such of the other members as are not in the same interest, and may join them as Defendants (Fraser v. Cooper, 21 Ch.D. 718; Commissioners of Sewers v. Gellatly, 3 Ch.D. 610). Such excepted persons, if not joined as Defendants, may apply to be so joined (ib). If a member of the class on behalf of which the Plaintiff purports to sue disputes the Plaintiff's right to represent the class and seeks to intervene in the action, he should apply by summons to be made a Defendant, or, in an extreme case, to have the action stayed or to have the conduct of it taken from the Plaintiff (Watson v. Cave 17 Ch.D. 19; May v. Newton, 34 Ch.D. 347).

208. If numerous persons have a same or common interest in the subject-matter of a litigation, and that interest has been adversely affected or is likely to be affected by a wrong-doer, and the relief?s claimed in the proposed suit are beneficial to all those numerous persons, the Court will authorise any one of them to institute a suit under Order 1, Rule 8 of the Code. The Court grants such permission ex parte and naturally it proceeds on the basis Of averments made in the plaint. Advertisements have to be issued in. the newspapers about the filing

of the suit and, if any one comes and says that he does not want to be represented by the Plaintiff, the Court will add him as a Defendant if his interest is adverse to the interest of the Plaintiff and if he supports the Plaintiff, still the Court may at its discretion add him as a Defendant to protect his own interest. When numerous persons have the same interest in a common matter it is impossible to have the same opinion from all. One may say that the relief claimed are beneficial to all but the others may dispute it and it is not for them but for the Court to decide that question. Mere difference of opinion amongst them cannot destroy the character of their common interest. Apart from the fact that the wordings of this rule are "having the same interest" and not "having the same opinion" on principle the observation made in Harkisandas's case (Supra) cannot be supported for the simple reason that if the difference of opinion amongst the numerous persons will destroy the sameness of their interest then no representative suit can ever be filed in any Court and the provision of Order 1, Rule 8 would be set at naught. The learned Judges of Harkisandas's case also did not take into consideration that the permission of the Court is a judicial act and also their attention was not drawn to the effect of Sub-rule (2) of the said Order. It is true that the granting of permission by the Court is not sacrosanct in the sense that persons on whose behalf the suit is filed can never come or contest the representative character of the suit. If any person comes and challenges the competency of the Plaintiff the Court may either decide the question by staying all further proceedings or it may decide the question at the time of final hearing of the suit adding the dissenting person as a Defendant.

209. All the members of the Club are equally interested in the election whether they belong to any particular group or not. Irrespective of the group alliance, they are entitled to see that the election is fairly and impartially held so that all voters can get their ballot papers and an opportunity to exercise their voting rights. The administration of, the Club and its affairs will be vested in the new Executive Committee under Rule 15. It is on evidence that no Trustee has been appointed, and hence under Rule 17(11) all properties belonging to the Club will be vested in the new Executive Committee. All members are entitled to see that new Executive Committee is validly constituted in a fair and impartial election irrespective of the fact that whether a particular member has a voting right or not. If an unfair and fraudulent election is held the very object of holding the election will be frustrated and the Executive Committee, which will be formed in such an unfair election, will be an illegal Executive Committee and all the members will be directly affected thereby. All members irrespective of their group alliance constitute a single class by themselves and all of them have a common interest in the subject-matter of the litigation. Moreover, the Plaintiff, Bimal Kanti, Dr. Das and even of all persons Roy, Bhattacharya and Guha have said that they wanted a fair and impartial election. Not a single member or voter has come forward to say that he wanted an unfair and fraudulent election. Not a single member has come forward to deny the competency of the Plaintiffs to represent him or to say that his interest is adverse to the interest of the Plaintiffs

and, even if any one had come and said so, still it would not have destroyed their "community of interest" or "sameness of interest". Merely because that there are two groups in the Club, it cannot be said that it had destroyed the community of interest or the sameness of their interest of the members in the ensuing election. Moreover, there is no iota of evidence on record to show that apart from Guha, Bhattacharya and Roy any of the alleged writers and the signatories of the ballot papers had any knowledge about the fraudulent posting of a small number of ballot papers which was done secretly. Two of these fraudulent persons namely Roy and Bhattacharya are Defendants and the third one Guha, who was a member of the Executive Committee, is represented by the Defendant No. 1 under Order 1, Rule 8. Similarly, all members of the Executive Committee are also represented by the Defendant No. 1 excepting Dr. Das who was initially so represented but was added as a Defendant by the Appeal Court.

210. Although Order 1, Rule 8 does not speak of any "common grievance" still before going to the actual implications of this expression it is necessary to deal with the memorandum of 600 members (Ex. 016) which according to the contesting Defendants shows that there was no "common grievance". The exhibit opposing the posting of ballot papers- under registered post does not bear any date excepting that some members have put the dates while signing their names. After going through this exhibit I find that the last date was put at least a week before the Election Board was formed. This memorandum is addressed to the President of the Club and not to the Chairman of the Election Board. As I have rejected the evidence of Bhattacharya there is nothing to show that this exhibit was at all submitted to the President. Moreover, it is not addressed to the Chairman of the Election Board and reason (a) given in this memorandum itself shows that at the time it was signed by the members the Election Board was not even constituted.

211. It is not necessary to go into the details of this exhibit. In reason (a) it is stated:

There should be no interference with the works of the Election Board which will be composed of all distinguished members of the Club. (*Italics are mine*).

Italic portion clearly shows that these 600 members expected that the Election Board would be constituted by distinguished members of the Club which in fact was not done in this case. Their opinion to the effect that "there should be no interference with the works of the Election Board", does not stand to any scrutiny for the obvious reason that the members of the Election Board are authorised to take the assistance of other members under the rules of the Club, and Dr. Das and 200 members requested the members of the Election Board to take the assistance of some members of their side to ensure a fair and impartial election, which cannot be said to be an interference with the works of the Election Board.

212. Other reason given by these 600 members was that the costs of sending

the ballot papers under registered post would be excessive, but the simple answer to that is that Dr. Das offered to pay the excess amount for sending the ballot papers under registered post which was refused by Roy and there is no evidence on record to show that Roy informed those 600 members about the aid offer of Dr. Das and it will be a mere speculation as to what would have been their reaction had Roy told them about his mala fide rejection of the said offer. It is not necessary to go to the other reasons given in this exhibit at all. Moreover, all the reasons given in this memorandum are mere expression of opinion of these members and, as law is not concerned with the mere expression of opinion but with grievance, any further discussion on this exhibit will wholly be a wastage of time.

213. If any legal or equitable right is infringed there must necessarily be a grievance and to redress it an action will lie against the wrong-doer. When such a right of any individual is infringed it becomes a wrong done to him personally and it will be his personal grievance. When numerous persons have the same interest in a common matter and that interest is infringed, it is a wrong done to all and it becomes a "common grievance". "Common grievance" in relation to a violation of common interest does not mean that every individual affected by the wrongful act must express his grievance, and if the grievance is a grievance in relation to any common interest it will nevertheless remain a common grievance even when some people do not express their grievance. When many people have a common or same interest in a subject-matter it cannot be expected that all these persons will actively focus their grievance when their common or same interest are prejudicially affected. Some may be active and some may remain passive and even some may oppose the institution of any legal proceedings for redressing the wrong done to them but mere passiveness and even active opposition will not destroy the character of a common grievance. If "common grievance" means that all the persons whose interests are prejudicially affected must make grievance then there can never be any "common grievance". We do not live in an ideal society and there is no dearth of dishonest men who secretly support the violation of interests common to all for sinister purposes, and unless the expression "common grievance" is liberally construed no representative suit can ever be filed. Even if a large section of people, whose common interests are affected, actively oppose the institution of a suit, still that will not destroy the character of "common grievance". In Daniell's Chancery Practice (8th ed., vol. 1, p. 177) (not cited from the Bar) it is stated:

Where the object sought is such that an action of this nature may be instituted, it may be maintained, although a majority of the class on behalf of whom it is instituted disapproved of it.

214. I find no cogent reason to differ from this pronouncement of such a great authority on the subject. The procedural rule must give way to the substantive justice and, if necessary, the Court will construe the procedural rule liberally so as to do the substantial justice. The Court of law exists to do substantial justice

and not to defeat it. Order 1, Rule 8 is a procedural rule and, as said, it is a rule of convenience and for the sake of convenience it may be relaxed. Moreover, this rule speaks of "having the same interest in one suit" and not "having the common grievance in one suit", but by so saying I do not intend to convey the idea that what Lord Macnaghtan has said about "common grievance" is not applicable to this country and I will be content in saying what I have said about this expression.

215. Relief?s claimed by the Plaintiffs are beneficial to all members of the Club and, in my view, conditions laid down by the Supreme Court in the above two cases and also by the Judicial Committee are fully satisfied not to speak of what was said by the learned Law Lords of the English Courts and the learned Judges of the Madras High Court. For all these reasons I am unable to accept the contention that the suit is not maintainable under Order 1, Rule 8 of the Code.

216. It was contended that the Court has no jurisdiction to interfere with the election of the Club as no "civil right or interest" nor any "right of property" of any member was involved in election. For the first proposition observations of Lord Colonsay to the effect that a Court of law will not interfere with the rules of voluntary association, unless to protect some civil right or interest which is sought to be infringed by their operation, in *Forbes v. Eden* 1 H.L. S.C. 568 was relied on. Instead of aiding the contesting Defendants this observation destroys their contentions as the first part of the sentence is qualified by the later part. Moreover, the expression "civil right or interest" is wide enough to include the rights and interests arising out of enforceable contracts. The rules of the ? Club constitute the contract between the members of the Club inter se and this Court is not debarred from protecting the contractual rights and interests of the members represented by the Plaintiffs which the members of the Executive Committee and the Election Board have wrongfully invaded and infringed.

217. For the second proposition observations of Lord Cranworth in the same case to the effect that save for the due disposal and administration of property, there is no authority in the Courts, either of England or of Scotland, to take cognizance of the rules of voluntary society entered into merely for the regulation of its own affairs-- was relied on which I am unable to accept as good law as subsequent decisions have clearly established that jurisdiction of the Court is no longer confined to the disposal or administration of property of associations. The following observations of Sir George Jessel M.R. in *Rigby v. Connol* (1880) 14 Ch.D. 482 made in connection with Section 4 of the Trade Union Act was also relied on in support of the second proposition: I have no doubt whatever that the foundation of the jurisdiction is the right of property vested in the members of the society, and of which he is unjustly deprived by such unlawful expulsion. There is no such jurisdiction that I am aware of reposed, in this country at least, in any of the Queen's Courts to decide upon the rights of persons to associate together when the association possesses no property. Persons and many persons do associate together without any property in common at all. A dozen people

may agree to meet and play whist at each other's houses for a certain period, and if eleven of them refuse to associate with the twelfth any longer, I am not aware that there is any jurisdiction in any Court of Justice in this country to interfere. Or a dozen or a hundred scientific men may agree with each other in the same way to meet alternately at each other's houses, or at any place where there is a possibility of their meeting each other; but if the association has no property and takes no subscriptions from its members, I cannot imagine that any Court of Justice could interfere with such an association if some of the members declined to associate with some of the others. That is to say, the Courts, as such, have never dreamt of enforcing agreements strictly personal in their nature, whether they are agreements of hiring and service, being the common relation of master and servant, or whether they are agreements for the purpose of pleasure, or for the purpose of scientific pursuits, or for the purpose of charity\ or philanthropy--in such cases no Court of Justice can interfere so long as there is no property the right to which is taken away from the person complaining. If that is the foundation of the jurisdiction, the Plaintiff, if he can succeed at all, must succeed on the ground that some right of property to which he is entitled has been taken away from him. That is the foundation of the interference of the Courts as regards clubs I think is quite clear.

218. No| only the portions *Italicised* by me go directly against the contentions mentioned above but the contention itself is also devoid of all substance as the jurisdiction of the Court is no longer confined only to the "property" of an association. My attention was not drawn to *Aslatt v. Southampton Corporation* (1880) 16 Ch.D. 143 (148) where Sir George Jessel said:

Now, it has been said--and I think truly said that, as a general rule, the Court only interferes where there is some question as to property. I do not think that the interference of the Court is absolutely confined to that now.

219. In *Osborne J. Amalgamated Society of Railway Servants* [1911] 1 Ch. 540 (562, 567) Fletcher Moulton L.J. dealing with the aforesaid observations of Sir George Jessel J. in *Rigby's* case (*Supra* (562)) said as follows:

If by term "property" the learned Judge intended to mean a beneficial interest in land or chatties, I am of opinion that this dictum goes too far. There are many rights which in such a sense could not be called rights of property, which nevertheless the law will protect, as for instance, if there was an association of men subscribing for a benevolent purpose, say for the endowment of a scientific institution, the whole funds of the association being dedicated to that charitable purpose on the terms that the administration should be under the control of the association, I can see no reason why membership of such an association should not have the same legal. protection as would be given in the case of an association where the members had a beneficial interest in the funds.

220. In the same case Lord Justice Buckley held:

The right to have benefits from the funds was unenforceable ; others seem to me

to be clearly enforceable. There is nothing in Section 4 to forbid a Court to entertain legal proceedings to enforce the member's right to his vote or his right to his distributive share in winding up. It is quite plain that he had rights in respect of property. All the property of the society belonged to him and his co-members, and none the less because Section 4 renders unenforceable certain rights in respect of that property. His vote was property: *Pender v. Lushington* 6 Ch.D. 70. The jurisdiction of the Court is therefore not excluded by any absence of rights of property.

221. In *Osborne's* case (Supra) a similar point u/s 4 of the Trade Union Act was involved as it was involved in *Rigby's* case (Supra) and the Court of Appeal in England came to a different conclusion from *Rigby's* case.

222. In *Pender's* case *Pender v. Lushington* 6 Ch.D. 70 (80-81) Sir George Jessel held as follows:

He is a member of the company, and whether he votes with the majority or the minority, he is entitled to have his vote recorded--an individual right in respect of which he has a right to sue. That has nothing to do with the question like that raised in *Foss v. Harbottle* (1843) 2 Hare 461 and that line of cases. He has a right to say, "Whether I vote in the majority or minority, you shall record my vote, as that is a right of property belonging to my interest in this company, and if you refuse to record my vote I will institute legal proceedings against you to compel you." What is the answer to such an action? It seems to me it can be maintained as a matter of substance, and that there is no technical difficulty in maintaining it.

223. In *Lee v. Showmen's Guild of Great Britain* (1952) 1 All E.R. 175 (1180) Lord Justice Denning made the following observations:

It was once said by Sir G. Jessel M.R. that the Courts only intervened in these cases to protect rights of property; see *Rigby v. Connol* 14 Ch.D. 487; and other Judges have often said the same thing; see for instance *Cookson v. Harewood* (1932) 2 K.B. 481 and 488. But *Fletcher Moulton* L.J., denied that there was any such limitation on the power of the Court: see *Osborne v. Amalgamated Society of Railway Servants* (1911) 1 Ch. 562 and it has now become quite clear that he was right: see *Abbott v. Sullivan*. *Abbott's* (1952) 1 All E.R. 226 shows that the power of this Court to intervene is founded on its jurisdiction to protect rights of contract.

224. In *Jyotish Chandra Guha v. Niren De and Ors.* Unreported judgment of Bachawat J. dated December 18 and 19 in Suit No. -17.92 of 1959, where our Mr. Guha was the Plaintiff and the present Attorney-General of India " was the Defendant, Bachawat J. said this:

In this case East Bengal Club is the member of the Indian Football Association and is a subscriber to its funds. The government of the Association together with all the properties and assets thereof are vested in a Governing Body. The Club

through

Its nominee is a member of the Governing Body. As such, member, the Club and its nominee has a right of voting in the deliberation of the Governing Body, The resolution affects the right of property of the East Bengal Club" in" the sense mentioned above. The Court's jurisdiction to grant an injunction is, therefore, not ousted.

225. judgment of Bachawat J. with all its force is applicable to the case before me. There the East Bengal Club was a member of the Indian Football Association and was a subscriber to its funds. Before me the Plaintiffs are the members of the East Bengal Club and they are the subscribers to its funds. The management and all properties and assets of I.F.A. was vested in the Governing Body of that Association and before me the management of the East Bengal Club under Rule 15 and all properties and assets under Rule 17(b) are vested in the Executive Committee. In that case the East Bengal Club through its nominee had a right of voting in the deliberations of the Governing Body of I.F.A. and, in the case before me, the Plaintiffs have the voting rights and their names are included in the electoral roll under Rule 38(a) and they are entitled to cast their votes in the election of the Executive Committee and other official of the Club. The Plaintiffs and the members represented by them are the joint owners of all the properties of the Club and they have both pecuniary and proprietary interest in all the properties which are vested in the Executive Committee and they have a right to see that those properties and assets are properly administered by a properly constituted Executive Committee. They have a further right to see that the members commanding confidence of the majority of the members of the Club should constitute the Executive Committee which is only possible if a fair and proper election is held so that all the members, in whichever group they may belong, will get an equal opportunity to cast their votes. These rights of the Plaintiffs including the members represented by them were mala fide and fraudulently infringed and invaded by Roy and Bhattacharya. They have broken their fundamental obligations and have abused the confidence reposed on them. They have rigged the election, and if these mala fide and fraudulent acts are allowed to stand then the new Executive Committee that would be formed would be an invalid and illegal Executive Committee and the Plaintiffs and all the members would be deprived of their legal rights to have the properties and funds including the affairs of the Club managed and administered by a lawful and validly elected Executive Committee.

226. Election of officials is an internal affair of every association and it is well-settled that normally the Courts have no jurisdiction to interfere with the internal affairs and management of any association. The right to institute legal proceedings on behalf of any association is ordinarily vested in the persons who are in control and management of the association. In the internal affairs and management of any association the rule of majority prevails and under this doctrine, subject to the provisions of the articles and memorandum, as general

body of the members can always validly ratify the acts of the managers if the managers have exceeded their powers in performing their duties or have done any act in exercise of their powers which they were capable of doing regularly but have done irregularly due to bona fide mistakes, no action lies. Individual members or a group of members cannot bring a representative action in the name of the association for challenging the mere irregular acts of the managers when those acts are capable of being ratified by the majority of the members and the majority of the members are willing to do so. If the rules of the association provide for doing a particular act and the power to do that act is conferred on the managers by the rules of the association and if that act is done irregularly or invalidly (not in the sense of culpa nor in the sense of illegality) no member of the association can make any complaint in a Court of law. These elementary principles have long been well established by a long catena of decisions too well-known to be cited and still for a number of days they were cited and, of course, strong reliance was placed on them on the assumption that all these acts of the Defendants No. 2 to 4 were done in good faith and in strict compliance with the rules of the Club without even touching the evidence on record.

227. Proceeding on these assumption it was said that *Foss v. Harbottle* (1843) 2 Hare 461; *Mozley v. Alston* (1847) 1 Ph. 790; *Magdougall v. Gardiner* (1875) 1 Ch.D. 13; *Forbes v. Eden* (Supra); *Browne v. Lal Trinidad* 37 ChJ. 1; *Burland v. Earle* [1902 (1) A.C. 83 and a number of decisions following the previous ones which need not be referred to here prevented this Court from interfering with the acts of the Election Board.

228. The general principles laid down in these cases have already been referred to above and it is wholly unnecessary to go into the facts of these cases as the contesting Defendants cannot take shelter under the general principles laid down in these well-known decisions for the obvious reason that all these assumptions on the part of their Learned Counsel were wholly unjustified. From the beginning to the end all acts of the Defendants Nos. 2 to 4, without any exceptions, were tainted with ill-will to fulfill the evil object, not to speak of that they were guilty of violating the mandatory provisions of the rules of the Club including their fundamental obligations as stated above. These Defendants have deliberately betrayed the confidence and trust and they have acted fraudulently and capriciously. About" the members of/ the Executive Committee 1 have already said what I had to say which I do not wish to repeat here. This is the solitary case in which all the exceptions to the general rules are combined together and are directly applicable and those exceptions to the general rules are too well-known to be enumerated here and I will confine myself only to some of them which are relevant for the purpose of deciding this suit.

229. If the impugned act is tainted with fraud and the evildoers are themselves in a majority so that the wrong done to the association cannot be brought to the Court at the instance of the association or the breach of rule is not a mere

irregularity but is of substance and cuts at the very root of the impugned act and vitiates the act itself or if the impugned act is done in a colourable exercise of power with dishonest and capricious motive so as to invade the personal or the corporate rights of the members or the act complained of amounts to a breach of a fundamental obligation or amounts to an oppression on the minority or the ratification of the act complained of will be ultra vires the powers of the association, the bar imposed on the Jurisdiction of the Court is automatically removed and the Court, at the instance of any member, is entitled to enter into the arena of the association to strike down the impugned acts. This jurisdiction of the Court to interfere with the internal affairs and management of the association is based on the well-settled principle of doing justice and, whenever the facts are such that the intervention by the Court is the only remedy open to the members, it is within the exception to the general rule and the Court retains its jurisdiction.

230. In *Foss v. Harbottle* (Supra (491-92)) Vice-Chancellor Sir James Wigram observed:

If a case should arise of injury to a corporation by some of its members, for which no adequate remedy remains, except that of a suit by individual Corporators in their private characters, and asking in such character the protection of those rights to which in their corporate character they are entitled, I cannot but think that the principle so forcibly laid down by Lord Cottenham in *Wall-worth v. Hold* 4 Mya L. and Cr. 635 ; see also 17 Ves. 327 per Lord Eldon) and other cases would apply, and the claims of justice would be found superior to any difficulties arising out of technical rules respecting the mode in which the corporations are required to sue. (Italics are mine)

231. In *Macdougall's case* (Supra (21, 25-6)) which was also relied on by the contesting Defendants it was also held:

Nothing connected with internal disputes between the shareholders is to be made the subject of an action by some one shareholder on behalf of himself and others, unless there be something illegal, oppressive, or fraudulent, or unless there is something ultra vires on the part of the company, qua company, so that they are not fit persons to determine it. (Italics are mine).

And it was further observed:

Of course if the majority are abusing their powers, and depriving the minority of their rights, that is an entirely different thing and there the minority are entitled to come before this Court to maintain their rights. (Italics are mine).

232. In *Russell v. Wakefield Water Works Company* (1875) L.R. 20 Eq. 474 (480, 482) after dealing with *Mozley v. Alston* (Supra) and *Foss v. Harbottle* (Supra) it was observed by Sir George Jessel M.R. as follows:

When you want to find the rule you must look to *Foss v. Harbottle*, where you will find the general rule is that which I have stated. But that is not a universal rule, that is, it is a rule subject to exceptions, and the exceptions depend very

much on the necessity of the case, that is, the necessity for the Court doing justice. (*Italics are mine*). Again Any other case in which the claims of justice requires it is within the exception As I have said before the rule is a general one, but it does not apply to a case where the interests of justice require the rule to be dispensed with. (*Italics are mine*).

233. In *Baillie v. Oriental Telephone and Electric Company Ltd.* (1915) 1 Ch. 503 (518) after citing from *Foss v. Harbottle* (*Supra*), a part of the passage already quoted above, Swinfen Edey L.J. held:

In other words it has been said that in certain cases members may sue on behalf of the corporation if the interests of justice require it. In *Mozley v. Alston*, which came before Lord Cottenham shortly after *Foss v. Harbottle*, there was no equity in the bill; it was a purely legal question. The Lord Chancellor said on that ground alone it would have been sufficient to decide against the Plaintiff, and to deter him from assuming a jurisdiction to decide the point of law at a time when the Court of Chancery only dealt with equity matters. He also stated that the rule which requires all persons interested to be parties had been relaxed to meet the exigencies of modern times, it being found that too strict an adherence to it would operate in many cases as a denial of justice, and leave parties who had a real grievance without a remedy. (*Italics are mine*).

234. In *Edwards v. Halliwell* (1950) 2 AH E.R. 1064 (1065-66, 1067, 1068) rules of the Trade Union provided that the regular contributions of employed members as per tables referred to therein should not be altered until the majority of two-thirds of the delegates approved the alterations on a ballot vote, but in a meeting of delegates the amount of contribution of employed members was increased without taking a ballot. The Plaintiffs who were members of the union filed the representative suit against the union and two members of the executive committee of the union for a declaration that the alteration adopted at the delegates' meeting was invalid. The trial Court granted the said prayer which was affirmed by the Court of Appeal and Asquith L.J. held:

The other point relied on by the Defendants was when in circumstances such as I have described, a remedy is sought by an individual, complaining of a particular act in breach of his rights and inflicting particular damage on him, it seems to me the principle of *Foss v. Harbottle*, which has been so strongly relied upon by the Defendants, does not apply either by way of barring the remedy or supporting the objection that the action is wrongly constituted because the union is not a Plaintiff. Nor, lastly can I accept the submission that, if the action is maintainable at law, it should nevertheless be dismissed because the vast majority of members approved the action taken by the Defendants.

235. In the same case *Jenkins* L.J. after referring to the general rule in *Foss v. Harbottle* (*Supra*) held:

The cases falling within the general ambit of the rule are subject to certain exceptions. It has been noted in the course of argument that in cases where the

act complained of is wholly ultra vires the company or association, the rule has no application because there is no question of the transaction being confirmed by any majority. It has been further pointed out that where what has been done amounts to what is generally called in these cases a fraud on the minority and the wrong-doers are themselves in control of the company, the rule is relaxed in favour of the aggrieved minority who are allowed to bring what is known as a minority share-holders' action on behalf of themselves and all others. The reason for this is that, if they were, denied that right, their grievance could never reach the Court because the wrong-doers themselves, being in control, would not allow the company to sue. Those exceptions are not directly in point in this case, but they show, especially the last one, that the rule is not an inflexible rule and it will be relaxed where necessary in the interest of justice.

236. The learned Law Lord, after referring to the observation of Romer J. in *Cotter v. National Union of Seamen* (1929) 2 Ch. 58 where such an exception was recognized, further said as follows:

It would go further. In my judgment, this is a case of a kind which is not even within the general ambit of the rule. It is not a case where what is complained of is a wrong done to the union, a matter in respect of which the cause of action would primarily and properly belong to the union. It is a case in which certain members of a trade union complain that the union, acting through the delegate meeting and the executive council in breach of the rules by which the union and every member of the union are bound, has invaded the individual rights of the complainant members, who are entitled to maintain themselves in full membership with all the rights and privileges appertaining to that status so long as they pay contributions in accordance with the tables of contributions as they stood before the purported alterations of 1943, unless and until the scale of contributions is validly altered by the prescribed majority obtained on a ballot vote. Those rights, these members claim, have been invaded. The gist of the case is that the personal and individual rights of membership of each of them have been invaded by a purported, but invalid, alteration of the tables of contributions. In those circumstances it seems to me the rule in *FQSS V. Harbottle* has no application at all, for the individual members who are suing sue, not in the right of the union, but in their own right to protect from invasion of their own individual rights as members.

237. Again the learned Law Lord after relying on a part of the observation of Sir George Jessel quoted above from Russell's case (*Supra*) held:

In my judgment, precisely the same conclusions as are there expressed apply in the present case, and the rule in *Foss v. Harbottle* affords no answer to the action.

238. The Chairman of the meeting of Bombay Municipality in *K.F. Nariman v. Municipal Corporation of Bombay* ILR 47 Bom. 809 (834, 836, 838), after casting his vote against an amendment-resolution, declared it to be lost. The Plaintiff

who was one of the Councilors and had cast his vote in favour of the said resolution filed the suit challenging, the said decision and prayed for a declaration that the amendment-resolution was duly carried as some of the Councilors, who voted against it, were incompetent to vote. Relying on *Burland v. Earle* (Supra), *Foss v. Harbottle* (Supra), *Motley v. Alston* (Supra) and *Macdougall v. Gardiner* (Supra) contention was made that the Court had no jurisdiction to entertain the suit which was not accepted by Mulla J. On *Burland v. Earle* his Lordship observed as follows:

But surely questions as to the validity of votes are not questions relating to the internal management of a Corporation. They are questions that can be disposed of only by a Court of Law.

I do not think that the present case is at all similar to any of the three cases cited above. It would, I think, be monstrous to say, if Councilors disqualified from voting at a meeting of the Corporation vote at the meeting, and by so voting create a majority that the minority has no remedy in a Court of Law.

Who could decide whether the votes were valid or not ? Certainly not the President nor the Corporation. The question of the validity or the invalidity of the votes could only be disposed of by a Court of Law. There is, therefore, no substance in the contention that if the declaration asked for in this suit is granted, it will be of no effect.

The question is whether the minority of the Corporation is to sit and look on while Councilors disqualified from voting at a meeting vote at the meeting and thus create a majority is the Court to say to the minority in such a case, "We shall not interfere for our interference may result in nothing". I think that to deny jurisdiction in such a case, or to refuse relief in such a case, would be equivalent to saying that there shall be no justice at all administered.

239. It is not at all necessary to refer to the subsequent decisions which do not throw any further light on the above principles. It is also wholly unnecessary to repeat the facts and law here which I have already dealt with exhaustively and, in my opinion, the general principle so strongly relied on by the contesting Defendants have no application in this case. All exceptions to the general rule including the principles laid by Mulla J. are directly applicable to the instant case and the case before me is a stronger case than *Nairn's case* (Supra) as the Defendants Nos. 2 to 4 have mala fide and capriciously attempted to hold the election most unfairly and fraudulently by not sending many ballot papers to many voters and thereby depriving their valuable rights. These Defendants have not only infringed the rights of the members but also they have broken their obligations and have violated the mandatory provisions of the rules of the Club. The general body of the members cannot usurp the jurisdiction of the Court nor has any power or authority to go into the question involved in the suit. I hold that all the exceptions referred to above are applicable in this case and the Court has jurisdiction to try this suit.

240. It was then contended that the Court cannot supervise the election as it would amount to a decree for specific performance of the rules of the Club and for this proposition reliance was placed on the following observations of Sir George Jessel made in connection with Section 4 of the Trade Union Act, 1871, in *Rigby's* case (*Supra*) as if it is of universal application:

I am satisfied that the agreement contained in the rules is an agreement to provide benefits for members, and that if I decide in favour of the Plaintiff, I directly enforce that agreement, because I declare him entitled to participate in their property, and the only property they have is their subscriptions and fines, and I restrain the society from preventing that participation. It seems to me that is directly enforcing that agreement; in fact, it is in substance directing and enforcing the specific performance of it, nothing more or less.

241. But my attention was not drawn to *Yorkshire Minors Association v. Howden* (1905) A.C. 256 where Lord Halsbury expressed grave doubts as to the correctness of the above observation of Sir George Jessel and Lord Macnaghtan expressly dissented from it and the House of Lords came to a diametrically opposite conclusion on the interpretation of Section 4 of the said Act. Similarly, my attention was not drawn to *Amalgamated Society of Carpenters etc. v. Braithwait and Ors.* (1922) 2 AC. 440 where the House of Lords following the judgment of Lord Macnaghtan in *Yorkshire Minors Association's* case overruled the above observation of Sir George Jessel and so it is not necessary to discuss the effect of the above observation in *Rigby's* case which I am unable to follow. This agreement is devoid of all substance for the simple reason that:

The specific performance of a contract is its actual execution according to its stipulations and terms. Such actual execution is enforced under the equitable jurisdiction vested in the Courts of this country by directing the party in default to do the very thing which he contracted to do. (*Fry on Specific Performance of Contract*, 6th ed., p. 2, Article 3).

If the Court appoints an officer and through him conducts the election, it cannot amount to a decree for specific performance against the contesting Defendants for the obvious reason that such an order would automatically put an end to their powers, duties and obligations, nor it can be said that by such an order the performance of their duties and obligations are specifically enforced by the Court. On the other hand, if the Court directs the contesting Defendants to hold the election in strict compliance with the rules of the Club, that will amount to a decree for specific performance.

242. It was" next contended that the jurisdiction of the Court, if any, is limited only to the setting aside of the wrongful acts and misdeeds of the Election Board and the Court has no further jurisdiction to hold the election under its supervision. In support of this contention no authority was cited and this argument was solely based on the principles applicable to the cases" of wrongful expulsion of members from the association where the Court exercises a limited

jurisdiction. In expulsion cases invariably the orders of expulsion are always challenged, and if the aggrieved members succeed in the actions the impugned orders are set aside. Moreover, in these types of cases the Court is only concerned with the validity of the order of expulsion and exercises a limited jurisdiction as will appear from the following observations of the Supreme Court in *T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum*, on which strong reliance was placed:

The following principles may be gathered from the above discussion: (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well-settled rules of construction in that regard. (3) The jurisdiction of a civil Court is rather limited; it cannot obviously sit as a Court of Appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited *supra*.

243. The law laid down by the Supreme Court as to the limited jurisdiction of the Courts to go into the question of validity of the order of expulsion was sought to be applied in the case before me, but I find no reason or principle whatsoever to make it applicable where an election is held unlawfully, unfairly or fraudulently. In cases of a wrongful expulsion, the aggrieved party is only affected whereas in the case of an unlawful, unfair and fraudulent election all members of the Association are directly affected. In the case of setting aside of the order of wrongful expulsion, the member continues to remain a member of the Association and enjoys the benefits and advantages of the Association, but in the case of setting aside of an election the entire election is nullified and no one is entitled to any right nor any one can enjoy any benefit or advantage out of such a non-existent election. In the case of setting aside of wrongful order of expulsion nothing remains to be done by the Court, but in the case of setting aside of the election a further election has to be held. The principle which govern the cases of wrongful expulsion stands completely on a different footing and the jurisdiction of the Court in such cases are necessarily limited as the scope of those suits are always limited. The relief's claimed in those suits are also limited in their character, and in the matter of granting relief's the Courts necessarily exercise a limited jurisdiction.

244. In fairness to the contesting Defendants I record here that excepting those cases and the principles decided therein which will be indicated at appropriate stages, the legal principles and the cases discussed hereinafter were not referred to before me. In my opinion, if the persons who are in charge of conducting an election deliberately hold it unfairly with a view to benefit some candidates they are not only guilty of committing breach of confidence reposed on them but are

also guilty of committing fraud.

245. Covin, accident and breach of confidence (per Lord Coke 4 Inst. 84) confer jurisdiction on the Court of conscience which is the Court of Equity and the Courts of Equity were established:

To detect latent frauds and concealments which the process of the Courts of Law is not adopted to reach to enforce the execution of such matters of trust and confidence as are binding in conscience though not cognizable in a Court of Law; to deliver from such dangers as are owing to misfortune or oversight; and to give a more specific relief, and more adapted to the circumstances of the case, than can always be obtained by the generality of the rules of the positive of common law (1 Blackstone Comm. 92. See also 3 Black. Comm. 429 to 432).

246. And The Office of the Chancellor is to correct men's conscience for frauds, breach of trust, wrongs and oppression of what nature so ever they be and to soften and mollify the extremity of law, which is- Summan Jus. Per Lord Chancellor Ellesmere in Earl of Oxford's case (1615) 1 Rep, Ch. 1.

247. The founder of the Equity jurisprudence further said in Earl of Oxford's case:

The cause why there is a chancery is for that men's action are so diverse and infinite, that it is impossible to make any general law which shall aptly meet with every particular act and not fail in some circumstances.

248. After the mantle of Lord Nottingham fell on him, in his letter to Lord Kaims, June 30, 1759, (quoted in Parke, Hist, of Chanc. 508) Lord Hardwicke said:

Fraud is infinite; and were a Court of Equity once to lay down rules, how far they would go, and no further in extending their relief against it, or to define strictly the species or evidence of it, the jurisdiction would be cramped and perpetually eluded by new schemes, which the fertility of man's invention would contrive.

249. Whenever a confidence is reposed and that confidence is betrayed not only the Courts of Equity assumed jurisdiction but also moulded the relief aptly to do complete justice between the parties (See Dent v. Bennett, 4 M. and Cr. 269; Boyse v. Rossborough 6 H.L.C. 2), and apart from what I have said before, these principles have, dictated me to reject the contention that the Courts exercise a limited jurisdiction in case the election is deliberately held unfairly or fraudulently.

250. After extensively quoting with approval from the celebrated Full Bench judgment of this Court "on jurisdiction" in Hriday Nath Roy v. Ram Chandra Barna Sarma ILR 48 Cal. 138 the Supreme Court in The Official Trustee, West Bengal and Ors. v. Sachindra Nath Chatterjee and Anr. Unreported decision of the Supreme Court dated December 13, 1968, in Civil Appeal No. 108 of 1966 The Official Trustee West Bengal and Ors. v. Sachindra Nath Chatterjee and Anr. at p. 6 of the Blue Prim laid-down the law in the following terms:

From the above discussion it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try

the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the question at issue, the authority to hear and decide the particular controversy that has arisen between the parties. Therefore, the fact that Remfry J. had jurisdiction to pass certain orders either under the Indian Trust Act, 1882, or under the Official Trustees Act, 1913, or under the Trustees and Mortgagees Powers Act, 1866, or under his inherent power is not conclusive of the matter. What is relevant is whether he had the power to grant the relief asked for in the application made by the settler. That we think is the essence of the matter. It cannot be disputed that if it is held that the learned Judge had competence to pronounce on the issue presented for his decision then the fact that he decided that issue illegally or incorrectly is wholly beside the point. See *Ittavira Mathai Vs. Varkey Varkey and Another*, . Therefore, we have now to see whether the learned Judge had jurisdiction to decide the issue presented for his determination. The relief prayed for, as seen earlier, was to permit the settler to revoke particular clauses in the Trust deed and to authorise him to alter the quantum of interest given to each of the beneficiaries by a deed inter vivos. Had the learned Judge jurisdiction to entertain those pleas ?

251. The facts in that case were that the settler executed a Trust deed with a power reserved to him to vary the terms and conditions of the Trust "by Will alone and in no other way or act". The settler administered the Trust for some time and thereafter intended to change some of the provisions by a deed inter vivos and so he took out an Originating Summons under the Rules of the Original Side of this Court which was heard by Remfry J. and an order was made giving him liberty to alter it by a deed. In terms of the said order the settler executed another Trust deed by which he, inter alia, made the alterations and died in 1946. The first Respondent filed the suit in 1950, inter alia, claiming that the said order of Remfry J. was null and void as it was made without jurisdiction and the original Trust deed stood unaffected. After making the above observations on the question of jurisdiction the Supreme Court came to the conclusion that Remfry J. had no jurisdiction to pass the impugned order. Now, on the question of inherent jurisdiction of the Court the following observations were made by the Supreme Court at p. 7 of the Blue Print:

It was then said that the order in question could have been made by Remfry J. in the exercise of his inherent powers as a Judge sitting on the Original Side of the Calcutta High Court. It was argued that a Judge sitting on the Original Side of the High Court of Judicature at Calcutta has all the powers of a Chancery Judge in England as that power has been conferred on him by the Letters Patent granted to that High Court. We shall assume it to be so. We may note that the settler did not invoke the inherent jurisdiction of the Court nor did the Judge purport to exercise that power. But, still, that cannot invalidate the order made if the Court had the inherent jurisdiction to make that order. Hence, the real question is, had he that inherent jurisdiction?

252. After referring to the several decisions of the English Courts it was held by the Supreme Court that the Courts Of Chancery in England had no jurisdiction to pass such an order and, hence, Remfry J. had no jurisdiction to pass the-impugned order, I have already decided that-the Court has jurisdiction to try this suit and now I am to decide whether the Court has any jurisdiction to hold the election under its own supervision as prayed for in the plaint. Addressing the Star Chamber about the Courts of Chancery it was said by King James:

Where the rigor of the law, in many cases, will undo a subject, there the Chancery tempers the law with equity, and so mixes with justice, as it preserves man from destruction. (Annals of King James, Saunder's Orders, vol. 1,1-X Pref.)

253. In his Commentaries on Equity Jurisprudence (3rd English ed., pp. 16-17) the American Jurist Judge Story said this:

In the Courts of common law there were certain prescribed forms of action to which the party must have resorted to furnish him a remedy; and, if there were no prescribed form to reach such a case, he was remediless, for they entertained jurisdiction only of certain actions and give relief according to the particular exigency of such actions and not otherwise. In those actions, a general and unqualified judgment only could be given, for the Plaintiff, or for the Defendant, without any, adaptation of it to particular circumstances.

But there are many cases, in which a simple judgment for either party, without qualifications, or conditions or peculiar arrangements, will not do entire justice ex adequate bono to either party. Some modifications of the rights of both parties may be required; some restraints on one side, or on the other, or perhaps on both sides; some adjustments involving reciprocal obligations, or duties, some compensatory or preliminary, or concurrent proceedings to fix, control, or equalize rights; some qualifications or conditions, present or future, temporary or permanent, to be annexed to the exercise of rights or the redress of injuries. In all these cases Courts of common law could not give the desired relief. They had no forms of remedy adapted to the objects. They could entertain suits only in a prescribed form, and they could give a general judgment only in the prescribed form. From their very character and organisation they were incapable of giving remedy which the mutual rights and relative situations of the parties, under the circumstances, positively required.

But Courts of Equity were not so restrained. Although they had prescribed forms of proceedings, the latter were flexible and might be suited to the different postures of cases. They might adjust their decrees, so as to meet most, if not all, of these exigencies ; and they might vary, qualify, restrain and model the remedy, so as to suit it to mutual and adverse claims, controlling equities and the real and substantial rights of all the parties. Nay, more, they could bring before them all parties interested in the subject-matter and adjust the rights of all however numerous, whereas, Courts of common law were compelled to limit their inquiry to the very parties in the litigation before them, although other

persons might have the deepest interest in the event of the suit. So that one of the most striking and distinctive features of Courts of Equity was that they could adapt their decrees to all the varieties of circumstances, which might arise, and adjust them to all the peculiar rights of all the parties in interest ; whereas Courts of common law (as we have already seen) were bound down to a fixed and invariable form of judgment in general terms altogether absolute, for the Plaintiff, or for the Defendant.

254. After exhaustively dealing with the jurisdiction of the Courts of Equity in granting relief in cases of accident, mistake and fraud Story in summing up at pp. 175-6A said:

And here the flexibility of Courts of Equity in adapting their judgments to the actual relief required by the parties is strikingly illustrated. Accident, mistake and fraud are of an infinite variety in form, character, and circumstances, and are incapable of being adjusted by any single and uniform rule. Of each of them one might say, "Mille trahit varios aditerso sole colored. The beautiful character, pervading excellence, if one may say, of equity jurisprudence is, that it varies its adjustments and proportions, so as to meet the very form and pressure of each particular case in all its complex habitudes. In all these, and many other cases which might be mentioned, Courts of Equity undo what has been done, if wrong, and do what has been left undone, if right.

255. Lord Chief Justice Holt in *Ashby v. White* (1703) (1) Bro. Pari. Cas. 62 : (1703) 2 Ld. Raym. 938 Said this:

If the Plaintiff has a right, he must of necessity have a means to vindicate and maintain it; and indeed it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal where a man has but one remedy to come at his right, if he loses that, he loses his right. It would look very strange, when the Commons of England are so fond of their right of sending representatives to Parliament, that it should be in the power of a sheriff or other officer to deprive them of that right, and yet that they should have no remedy; it is a thing to be admired at by all mankind. Supposing then that the Plaintiff had a right of voting, and so it appears on the record, and the Defendant has excluded him from it, nobody can say that the Defendant has done well: then he must have done ill, for he has deprived the Plaintiff of his right; so that the Plaintiff having a right to vote and the Defendant having hindered him of it, is an injury to the Plaintiff the Plaintiff is obstructed of his right, and shall therefore have his action. And it is no objection to say that it will occasion multiplicity of actions: for if men will multiply injuries, actions must be multiplied too, for every man that is injured ought to have his recompense But in the principal case, my brother says we cannot judge of this matter because it is a parliamentary thing. O ! by all means, be very tender of that.

To allow this action will make public officers more careful to observe the constitution of cities and borough, and not to be so partial as they commonly are

in all elections, which is indeed a great and growing mischief, and tends to the prejudice of the peace of the nation*. But they say that this is a matter out of our jurisdiction, and we ought not to enlarge it. I agree we ought not to encroach or enlarge our jurisdiction; by so doing we usurp both on the right of the queen and the people; but sure we may determine on a charter granted by the king; or on a matter of custom or prescription, when it comes before us, without encroaching on Parliament. And if it be a matter within our jurisdiction, we are bound by our oaths to judge of it.

256. The right of voting of Ashby was conferred by Parliament and the right of voting of the Plaintiffs and the members represented by them are conferred by the rules of the Club. Ashby was wronged and so are the Plaintiffs. Ashby was prevented from exercising his right and so are the members represented by the Plaintiffs. In Ashby's case "Parliament undoubtedly would say, take your remedy at law" (per Lord Hale C.J.), and here the Election Board has said this to the Plaintiffs, "go to the Courts of law for your remedy". Ashby had no remedy elsewhere and so he was compensated and if the Plaintiffs and the members of the Club will go away from this Court without any redress I will be guilty of committing a monstrous injustice by sending them to the same set of dishonest people to be guillotined again.

257. The contention of Mr. Subimal Roy that this case is" a novel one and so is the remedy asked for was similarly raised in *Chapman v. Pickersgill* 2 Wilson 146 and in rejecting it I can do no better than to adopt what Lord Chief Justice Pratt said: "so it was said in *Ashby v. White* (Supra). I wish never to here this objection again".

258. Articles of Associations of the company in *M.K. Srinivasan and Others Vs. Watrap S. Subramania Aiyar and Others*, (relied on by Mr. Milter), inter alia, provided that there should be six Directors of the Company and out of them two should retire by rotation which should be filed up by election to be held at the general meeting. The said Article was amended by reducing the number of Directors to five with a provision that the existing six Directors should vacate their offices in the general meeting to be held in the year 1930 and not more than five Directors should be elected in their place. In the ordinary general meeting in which the Defendant "No. 3 presided, five Directors were elected by show of hands. A poll was then demanded and the Chairman directed that it should be held at the Company's office on a subsequent date and appointed the Secretary of the Company to act as a returning officer who, however, made no attempt to take the poll and, hence, the suit was filed, inter alia, claiming that the Court should direct a poll to be taken so that five Directors might be elected. Curgenven J. after referring to these acts said:

The remainder of the arguments addressed to us represent an attempt to prevent the Court from interfering. It would seem that in a case where the shareholders have, through no fault of their own, been deprived of their fundamental privilege of choosing their own management and where that management has

passed into the hands of persons with no legal title to enjoy it, if ever there was a case for the Courts interposition it must be this.

259. Cornish J. held:

I think it falls within the rule that the Court has jurisdiction to entertain a suit by share-holders against the company in" respect of the infringement of their individual rights as shareholders when the interests of justice so require: *Baillie v. Oriental Telephone Company* (supra), and their Lordships directed the Defendant No. 3 to hold the election;

260. Mr. Sen contended that this case was wrongly decided by the Madras High Court and only reason advanced by him was that the Court had no jurisdiction to make such an order in a suit although it could make it in a properly constituted proceeding under the Indian Companies Act. I am unable to accept this contention for the obvious reasons that the Articles of Association constituted a contract between the members inter se and the share-holders were prevented from exercising their voting rights as the Returning Officer did not hold the meeting at all and this fundamental breach of obligation on the part of the Returning Officer prejudicially affected the rights of the share-holders and, hence, the share-holders were entitled to file the suit u/s 9 of the Code. Moreover, the five Directors were illegally elected and they could only be removed by the Court in a suit and not in a proceeding under the Companies Act. It is well-settled that the appointments of Directors, if illegal, can always be challenged in a suit and if any authority is necessary for such an elementary proposition one can refer to *Rameswara Prosad Bajoria and others Vs. Satya Charan Law and others* affirmed on appeal by the Federal Court in *Satya Charan Law v. Ramcshwara Prosad Bajoria* AIR 1950 F.C. 133.

261. This decision of the Madras High Court completely set at naught the argument relating to the limited jurisdiction of the Court in the matter of granting relief?s. The Bombay High Court in *Nariman's case* (supra) expressly held that the Court of law is the sole forum for adjudicating the disputes relating to the voting rights of the members including the legality and validity of votes cast in the meetings of the Corporation. The Madras High Court went further and in directing the Defendant No. 3 to hold the election recognised that the Court has jurisdiction to supersede the appointment and authority of the Returning Officer and in his place has a further jurisdiction to appoint another Returning Officer to hold the election.

262. This decision of the Madras High Court is also an authority for the proposition that the jurisdiction of the Court is not limited to the setting aside of the acts "and misdeeds of the members of the Election Board. If I only set aside the mala fide acts and misdeeds of the Election Board and direct them to send the ballot papers again it will be a monstrous injustice as they are incapable of acting fairly and honestly. The Executive Committee being wholly dominated by Guha will appoint the same type of people even if I supersede powers of the

present Election Board and the Plaintiffs will have to come to the Court again for redress. Moreover, the general body has no power to supersede the authority of the present Election Board nor they have any power to appoint a fresh Election Board in its place and in these circumstances a complete deadlock has been created and will further be created if I only set aside the acts of the Election Board.

263. Still it was said that the Court had no power to remove this deadlock and the only remedy open to the members was to file another suit for dissolution of the Club and for distribution of its assets. This "unkindest cut" was not only supported by the President of the Club but it was also said on his behalf that it would be an "irresponsible act" on the part of this Court to hold the election through an officer and of course strong reliance was placed on the judgment of P. B. Mukharji J. in *Bengal and Assam Investors Ltd. Vs. J.K. Eastern Industries Private Ltd.*, where his Lordship said this:

Section 186, Companies Act, 1956, has not made this Court a director or shareholder of every company. My interpretation is that in spite of Section 186, Companies Act, this Court will not easily intervene in any company meetings either in holding or calling or in conducting such meetings.

This section is a piece of incongruous paternalism of an outside agency, the Court, in the self-government of joint stock companies whose main principle is management by their own directors and share-holders who are the most interested and responsible persons in the good government of companies.

It is an extra-ordinary power in the historical context of the evolution of company law when one recalls the ordinary principle, of company law that a company which cannot carry on its own management and there is a deadlock, the traditional course is to wind up the company. This new power is also un-suited to the Court because its substance is a purely executive function of calling, holding and conducting a meeting.

The Court can discharge that function only vicariously through a Chairman or President whom it appoints. Judicial work Of Court through a delegate is never an efficient innovation of jurisprudence. Section 186, Companies Act, 1956, introduces this power which is also by its nature irresponsible. It is irresponsible power because even after the Court has called, held and conducted meetings, it is not made responsible for the consequences that follow in the sense that it is left with no standing machinery to see to their proper working.

As the power is great, unsuitable and irresponsible, the discretion granted u/s 186 of the Companies Act must be very sparingly used and it should be used with great caution, so that this Court docs not become either a share-holder or a director of the company trying to participate in the internecine squabbles of the company.

264. It cannot be disputed that the power conferred en the Court by Section 186

of the Companies Act is very wide and as said it is an "irresponsible power", but when the Courts will have to deal with the irresponsible people like Guha and the contesting Defendants it will not deter from exercising such an "irresponsible power" by not only striking down the most reprehensible acts as- stated -before but also by appointing an officer to conduct the meetings of the companies.

265. In the matter of Ruttonjee and Company Ltd.--United Brexveries Ltd. v. Ruttonjee and Company Ltd. (1968) 2 Com.L.J. 155 (174) S.P. Mitra J. said:

Upon considering the relevant authorities on this subject and examining the language of the Statute the main principles involved in trying an application u/s 186, are, to my mind, as follows:

- (1) The Court would not ordinarily interfere with the domestic management of a company which should be conducted in accordance with the articles.
- (2) The discretion granted u/s 186 should be used sparingly with caution so that the Court does not become either a share-holder or director of the company trying to participate in the internecine squabbles of the company.
- (3) The word "impracticable" means impracticable from a reasonable point of view.
- (4) The Court should take a common sense view of the matter and must act as a prudent man of business.
- (5) A prudent man of business has not a sensitive officious view of intervention in case of every rivalry between two groups of directors; prudence demands that the Court should ordinarily keep itself aloof from participating in quarrels of rival groups of directors or share-holders.
- (6) But, where the meeting can be called only by the directors and there are serious doubts and controversy as to who are the directors or where there is a possibility that one or other or both the meetings called by the rival groups of directors may be invalid,, the Court ought not to expose the share-holders to uncertainties and should hold that a position has arisen which makes it "impracticable" to convene a meeting in any manner in which meetings of the company may be called.
- (7) The Court should exercise its power u/s 186, when upon considering all the facts and circumstances of a case, it can say with a reasonable approach to certainty or even prima facie that a meeting called in the manner in which meetings are ordinarily called under the Act or under the Articles, would be invalid.
- (8) Before the Court exercises its discretion u/s 186 the Court must be satisfied, when a director or a member moves an application, that it has been made bona fide in the larger interests of the company for removing a deadlock otherwise irremovable.

266. It is true that provisions of the Indian Companies Act do not apply to this Club and alone on this ground the decisions relied on by the Learned Counsel appearing for the contesting Defendants have no application in the instant case. But, even if the tests laid down by *Mitra J.* are taken into consideration, the case before me will be the fittest one in which the Court should exercise its "irresponsible power" to remove the deadlock. Apart from the new power given under the Indian Companies Act, which do not apply to this case, in my opinion, the Court is always competent to remove the deadlock for the purposes of giving effect to the rights of the parties.

267. In *Cameron v. Cuddy* (1914) A.C. 651 (655-6) (relied on by Mr. Mitter) the Respondent agreed to sell, inter alia, a timber mill with its assets and timber to the Appellant as set out in the schedule to the agreement for a large sum of money payable by installments. Clause 6 of the said agreement provided that if later on it was found that the said assets, or any one of them, were not forthcoming and could not be delivered, the value of deficiency of such assets was to be estimated by three Arbitrators and the money that might be awarded by the Arbitrators would be deducted from the purchase price. After the transfer of the mill and some installments were paid, deficiency in the said assets were found and the three Arbitrators entered upon the reference and by a majority decision awarded some money to the Appellant representing the deficiency in value of the assets and timber. Award of the Arbitrators was set aside by the Court and as the Appellant did not pay any further installments the Respondent filed the suit for recovery of the balance sum payable under the agreement after allowing the value of the deficiency of the assets but not the timber. The Appellant in his amended statements of defence claimed the value of timber which was, however, not allowed by the Courts below and ultimately the matter went up to the Judicial Committee. Delivering the judgment of the Board in favour of the Appellant Lord Shaw held as follows:

In the working out of this Clause 6, something in the nature of a real misadventure has occurred. An actual deficiency is admitted to exist, yet a decree stands against the Appellant as if it did not. He accordingly stands due to pay money which it is admitted on all hands that he does not owe, and he is left to take recourse in further litigation so as to retrieve the amount of overpayment.

This mischance occurred in this way. Unhappily the Arbitrators could not agree and made a majority award. The Court declined to give effect to the award. In these circumstances, when the Respondents sued for their purchase price the Appellant asked the Court itself to fix the value of the deficiency, and in terms of Section 6 of the bargain to deduct it from the price due. This claim for deduction was not admitted to probation and was not given effect to. In their Lordships' opinion it was a proper claim and was properly stated by way of defence.

When an arbitration for any reason becomes abortive, it is the duty of a Court of Law, in working out a contract of which such an arbitration is part of the practical machinery, to supply the defect which has occurred. It is the privilege of a Court

in such circumstances and it is its duty to come to the assistance of parties by the removal of the impasse and the extrication of their rights. This rule is in truth founded upon the soundest principle, it is practical in its character, and it furnishes by an appeal to a Court of Justice the means of working out and of preventing the defeat of bargains between parties. (*Italics are mine*).

268. It was contended that this principle laid down by Lord Shaw is restricted to arbitration matters. In aid of this argument it was said that the parties to an arbitration agreement choose their own private forum, and so long the reference continues the jurisdiction of the Court remains suspended, and if the reference or the award becomes infructuous the jurisdiction of the Court is revived and in exercise of this revived jurisdiction the Court can determine the rights and liabilities of the parties.

269. The jurisdiction of the Court does not remain suspended while the arbitration proceeding goes on. The Court has power to revoke the authority of the Arbitrators. Party to an arbitration agreement is not precluded from instituting a suit in Civil Court either before or during reference. If the other party applies for stay of the suit u/s 34, the Court may grant or refuse it, and I am unable to accept what were said in aid of above contention. The reasons advanced in support of this contention do not find their place in the speeches of Lord Shaw and his Lordship himself gave the reasons for the "Rule" with no uncertain terms and it would be wholly improper to import some other reasons to restrict the operation of this principle to the infructuous arbitration proceeding.

270. "Law is the dictates of reason" (Jenkins Cent. 117) and in *Ashby v. White* (Supra) Lord Chief Justice Holt said:

Let us consider wherein the law consists, and we shall find it to be, not in particular instances and precedents but in the reason of the law, and *ub ieadem ratio, ibi idem jus*.

271. Without any qualifications the above principle was laid down by Lord Shaw and it is based on reasons and the "Law is the highest reason, which commands those things which are useful and necessary, and forbids what is contrary thereto": *Le est ratio summa, quae jubet quae sunt utilia et necessaria, et contraria prohibet* (Coke Litt. 319b). And I do not find any reason why the principle laid down so forcefully and clearly by Lord Shaw should not apply in this case. The distinction sought to be made does not stand to any reason and I am unable to accept it. Moreover, in that case as an impasse was created the Court took upon itself the duty to remove it in order to do justice, and the same thing has happened here, as stated before, and so it is my duty to remove the impasse as no one should ever depart from the Courts of Law without a remedy when his rights recognised by law is infringed.

272. It was contended that the previous elections held under the orders of the Court in the years 1950, 1960 and 1965 should not be treated as precedents as those orders were passed by consent and the Court should not create a new

remedy by holding the election under its supervision through an officer. There is no evidence on record to show that the elections of 1950 and 1960 were held under any consent order. Be that as it may, in my opinion, this argument has no substance at all as it violates the well-known maxim *In Novo Casu, Novum Remedium Oportet* (2 Inst. 3).

273. In *Story's Equity* (supra, p. 19, Article 33) it is stated:

Perhaps the most general, if not the most precise, description of a Court of Equity, is, that it had jurisdiction in cases of rights, recognised and protected by the municipal jurisprudence, where a plain, adequate, and complete remedy could not be had in the Courts of common law. The remedy must have been plain ; for if it be doubtful and obscure at law, equity would assert a jurisdiction. It must have been adequate, for, if at law it fell short of what the party was entitled to, that founded a jurisdiction in equity. And it must have been complete; that is, it must have attained the full end and justice of the case. It must have reached the whole mischief and secured the whole right of the party in a perfect manner, at the present time and in future; otherwise, equity would interfere and give such relief and aid as the exigency of the particular case might require.

274. Mere setting aside of the acts and misdeeds of Election Board will not give the Plaintiffs "plain, adequate and complete remedy", and if in this case the Court of Law is unable to give "plain, adequate and complete remedy" then it must be the case in which the Court of Equity will exercise its jurisdiction and in exercise of its jurisdiction it will give "plain, adequate and complete remedy". Jurisdiction of the Courts of Equity begins when the Courts of Common Law fail to administer justice and "equity delights to do complete justice and not by halves" [*Knight v. Knight* (1734) 3 P. Wms. 331 (334)) and *Palk v. Clinton* (Lord) 12 Ves. Jun. 48 (53).]

275. In *Donoghue v. Stevenson* (1932) A.C. 562 Lord MacMillan said:

The criterion of a judgment must adjust and adapt in itself to the changing circumstances of life and to that I add that the law of this country is a living law and it is neither confined to Judicial Precedents nor to the Statutory, Enactments. Jurisdiction of the Court to grant complete relief is neither confined to judicial precedents nor to the CPC and whenever justice requires the Court has ample power to grant all effective remedies to the aggrieved party provided of course such a relief is not expressly or by necessary implication barred. The power of Court to grant relief in certain circumstances is not even confined to the prayers of the plaint. The Court can take notice of subsequent events and the changed circumstances in order to give relief to the parties and if necessary, even by moulding the relief's. The catalogue of the acts and deeds mentioned before of these persons are nothing but the worst type of evil intents and they speak for themselves. Still it was said that this Court cannot grant complete relief and I say it is unjust to lay an embargo on this Court instead of arresting the progress

of these evil acts of these dishonest people. It is the duty of the Court to preserve the rights of the aggrieved parties and to suppress dishonesty and cunning of these wicked men who have not only threatened but in fact have also invaded the rights of the Plaintiffs and the members, of the Club. If I accept their contention I will not only slaughter the well-established cannons of Equity in the alter of artifices and deceitful acts of these dishonest people but will also suffer the Plaintiffs again to be entrapped by the fraudulent contrivances and cunning of these unscrupulous people. To deny jurisdiction in this case is to force the Plaintiffs to be the victims of the artful, importunate and cunning of these people who are guilty of worst type of breach of confidence and fundamental obligation to be fair, honest and impartial.

276. Even if anyone says that there is no positive proof of fraud or imposition still upon a review of the whole circumstances there cannot be any doubt that the long catalogue of these nefarious acts and misdeeds of these people are grossly against conscience, most reprehensible, mala fide and capricious not to speak of that they are guilty of deliberate betrayal of confidence and worst type of abuse of power and breach of fundamental obligations and here the entire defence is broken down to pieces. The Court of Equity being the Court of Conscience always had the jurisdiction to suppress these types of nefarious acts and misdeeds and as a matter, of course, gave complete redress to the aggrieved party by creating new relief? if the Courts of Common Law were unable to give "plain, adequate and complete remedy". Assumption of jurisdiction by the Courts of Equity was always based on the broadest principles of social justice, morality and good conscience, and in the administration of justice the Courts of Equity always gave complete relief and never allowed anyone to depart from it without an adequate remedy whenever the injury was occasioned by malicious, wanton and capricious abuse of power and breach of confidence. Rejecting the contention that the Court has no jurisdiction to hold the election under its own supervision I can do no better than adopting what Lord Chief Justice Knight Bruce said:

A country whose administration of justice did not afford redress in a case of the present description would not be in a state of civilization. (Slim v. Croucher 1 De. G. F. and J. 527).

277. Having dealt with all the relevant facts and law and all the contentions made on behalf of the contesting Defendants my answer is "Yes" to the issues Nos. 1(a), 1(b), 2, 3, 5, 10, 11, 13, 15 and 16 and "No" to the issues Nos. 4, 6, 7, 8(a), 8(b), 8(c), 8(f), 12 and 14. My _ answer to issue No. 8(d) is that out of 4,800 some ballot papers were only posted and the Defendants Roy and Bhattacharya with undue haste and full knowledge of the pending application before the Appeal Court did so mala fide and fraudulently to show as if all the ballot papers were posted although they did not post many ballot papers at all. It is not necessary to answer the remaining points involved in that issue. My answer to issue No. 8(g) is that Dr. N. Das and many voters did not receive their respective ballot papers.

I am not? deciding the issue No. 9(a) for the reason given before, and whatever I have said in connection with this issue will not operate as res judicata in any subsequent suits or legal proceedings. In the view that I have taken, it is wholly unnecessary to decide the issue No. 9(b).

278. The Plaintiffs have succeeded in this suit. I pass the following decree and orders:

(a) There will be declarations in terms of prayers (b) and (c) of the plaint.

(b) The Defendants No. 1 to 4 and each of them as "members of the Election Board of the East Bengal Club are hereby restrained by an injunction from holding" the election which is the subject-matter of this litigation.

(c) All ballot papers printed from Chanakya Press as alleged by the Defendants Roy and Bhattacharya in their evidence are hereby cancelled and set aside.

(d) The election which is the subject-matter of this litigation shall be held under the supervision of this Court.

(e) The Defendant No. 1 is directed to supply eight true and correct copies of the original voters list to the Joint Special Officers appointed hereunder within ten days from the date they will ask him to supply the same.

(f) The Defendant No. 1 is further directed to supply to the Joint Special Officers such number of ballot boxes as he may be asked to supply them within seven days from the date they will ask him to do so.

(g) Mr. A. M. Bose, Barrister-at-law, and Mr. M. N. Banerjee, Barrister-at-law, are appointed as Joint Special Officers to hold and conduct the said election and they are hereby directed to do the following acts and things:

(i) To fix the date, time and place of holding the election which must be held by them as soon as possible;

(ii) To print new ballot papers with the respective posts and names of candidates for such posts by taking them from one of the ballot papers exhibited in the suit in the manner prescribed in Rule 38(g) of the Club (ballot papers in the form of Inland papers with counterfoils) and they must see that the new ballot papers are printed in different ink or colour so as to make them clearly distinguishable from the ballot papers exhibited in the suit;

(iii) To insert a notice in the same manner as in the ballot papers in the suit intimating the voters about the time, place and date of holding the election and also intimating them that if anyone wishes to cast his vote by post the ballot papers should be sent under registered post to one of the Joint Special Officers so as to reach him on or before the date fixed for election. The Joint Special Officers are also given leave to insert such other facts as(they will consider fit and necessary;

(iv) To sign ballot papers after the names and addresses of the voters are written

on the Inland letter papers, but they are not required to put their joint signatures in each ballot paper.

(h) The Joint Special Officers are hereby authorised:

(i) To appoint such number of persons as they may require and on such remuneration, as they may think fit for the purposes of facilitating their works which they are required to do in turns of this decree provided that no member of the Club should be appointed by them.

(ii) To utilize the service of those persons to be appointed by them as aforesaid for the purpose of writing the ballot papers and all other workers including the counting of votes, but such counting must take place in their presence and the Joint Special Officers shall themselves record in writing the result of such counting including the number of valid and invalid votes received by each candidate and shall file it in Court along with their report.

(iii) To do other acts and things which they, at their sole discretion, may think fit and necessary for the purpose of discharging their aforesaid duties and they need not have to apply to Court for further directions unless they think it necessary to do so. (i) After the names and addresses on the ballot papers are written from the lists to be supplied to the Joint Special Officers by the Defendant No. 1 they with the help and assistance of those persons to be appointed by them, shall check whether (i) the names and addresses of all the voters are correctly written on the envelopes and, if not, have them correctly written; and (ii) the postage stamps of proper value are properly affixed on each and every Inland paper containing the ballot paper.

(j) The Joint Special Officers must post all ballot papers to the respective voters under registered post with acknowledgment due from different Post Offices, but they must not post any ballot paper in the General Post Office, Calcutta, Shyambazar Post Office, Calcutta and Elgin Road Post Office, Calcutta.

(k) The Joint Special Officers and their employees must not disclose to any person the names of the Post Offices in which the ballot papers will be posted by them and along with their return shall submit all receipts granted by the Post Offices for posting the ballot papers and acknowledgment receipts that might be received by them including any registered envelope which may be returned to them as undelivered to the addressees.

(1) After three days of posting of all ballot papers the Joint Special Officers shall insert once in the Amrita Bazar Patrika, once in the Ananda Bazar Patrika and once in the Dainik Basumati a notice containing the following:

(i) The ballot papers for the ensuing election of the East Bengal Club have been posted under registered post and, if any voter wishes to cast his vote by post, he must send the ballot paper under registered post addressed to any of the Joint Special Officers whose names and addresses are given hereunder so as to reach the Joint Special Officers on or before the date of election:

Names of Joint Special Addresses of Joint Special Officers Date of Election: (To be filled in by them.) In this notice the Joint Special Officers must give their names and addresses and the date of election.

(m) The Joint Special Officers are authorised to insert in the notice mentioned in the preceding clauses such other facts as they may think fit and proper.

(n) As far as possible the Joint Special Officers shall try to follow the relevant rules of the Club relating to election.

(o) The Joint Special Officers are at liberty to take the Police help at the time of holding the election if they so desire.

(p) Each Joint Special Officer will receive Rs. 2,500 as his remuneration.

(q) The Plaintiffs are directed to pay to the Joint Special Officers all expenses for holding and conducting the election including the remuneration, costs, charges and expenses of the Joint Special Officers and the persons to be appointed by them at the first instance and whatever sum the Plaintiffs shall pay to the Joint Special Officers as aforesaid shall come out of the fund of the Club which the Plaintiffs will be entitled to realize by execution of this decree if they are not paid by the new Executive Committee which is going to be formed in this election.

(r) All costs of the Plaintiffs and the added Defendants incurred in the suit as between Attorney and client including the reserved costs, if any, shall come out of the funds of the Club. The Defendants Nos. 1 to 4 shall pay and bear their own costs of the suit and no part of their costs shall come out of the funds of the Club. Certified for two counsel.

(s) Further hearing of the suit is adjourned for consideration of the report of the Joint Special Officers, for declaration of the results of the election and such other matters as may be necessary in connection therewith. ? (t) Liberty is given to the Joint Special Officers including the parties to the suit to apply from time to time for necessary directions to carry out the decree and orders passed herein, (u) The Registrar of the Original Side of this Court is directed to assist the Joint Special Officers for the purpose of inspecting the exhibits in suit which they will require for the purpose of carrying out their duties entrusted to them by this decree.

(v) The Joint Special Officers, the Defendant No. 1, the Plaintiffs and the Registrar of the Original Side of this Court are directed to act on the signed copy of the minutes.